

No. 12145

**United States
Court of Appeals
for the Ninth Circuit.**

**W. M. (Alias, BILL) GILLIS,
Appellant,
vs.**

**BEN F. GILLETTE and IRENE GILLETTE,
Appellees.**

Transcript of Record

**Appeal from the United States District Court,
for the District of Alaska,
Second Division**

FILED

MAY 4 1950

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

For Plaintiff,

W. M. GILLIS,
C. C. TANNER,
Nome, Alaska.

For Defendants,

BEN F. GILLETTE and
IRENE GILLETTE,
CHELLIS CARPENTER,
Mills Building,
San Francisco, California.

In the District Court for the Territory of Alaska
Second Division

No. 3737

W. M. (Alias, BILL) GILLIS,

Plaintiff,

vs.

BEN F. GILLETTE and IRENE GILLETTE,
Defendants,

COMPLAINT

Plaintiff complains of defendants and for cause
of action alleges:

1.

That plaintiff is now, and was at all times hereinafter stated, a contractor and builder doing business as such at Nome, Alaska, and that as such contractor and builder, on and between the 10th day of September, 1946, and the 15th day of December, 1946, at the special instance and request of defendants (owners) and upon their promises to pay the reasonable value thereof, the plaintiffs performed work and labor and furnished and supplied work, labor and materials, to the defendants, in and about the removal of a frame dwelling house owned by the defendants, from Lot 1, Block L, to Lot 8, and the north 22 feet of Lot 7 in Block B, Nome, Alaska, also owned by the defendants, and the erection, alteration and repair of said building upon its new location on Lot 8 and the north 22 feet of Lot 7, Block B, aforesaid, where it is now situate; that the said labor was performed and

said materials were furnished to be used, and were actually used, in the removal, erection, alterations and repairs of said dwelling house; and that said labor and materials were of the reasonable worth and value of \$2,746.83.

2.

That the defendants were, at the dates hereinbefore mentioned, and still are, the owners and reputed owners of the premises described as Lot 8 and the north 22 feet of Lot 7, all in Block B, Nome, Alaska, as hereinbefore mentioned; and that the said premises, and the whole thereof, are required for the convenient use and occupation of said dwelling-house.

3.

That the last date upon which said work and labor of removing, altering, erecting and repairing said building was performed, and said materials were furnished, is December 15, 1946.

4.

That the plaintiff duly filed, as required by law, his claim for a lien for the amount due and owing him as aforesaid from said defendants, in the office of the recorder for the Cape Nome Precinct, Second Division, Alaska, on the 14th day of March, 1947, and within ninety days from the date the last labor was performed and materials furnished as aforesaid, which claim for lien was duly signed and verified by the claimant, plaintiff herein; A true copy of this said claim of lien is attached hereto and marked Exhibit A, and form a part of this

complaint to the same extent as though it were set forth at large herein.

5.

That no part of the price or reasonable value of said labor and materials has been paid, except the sum of One Thousand Dollars (\$1,000.00); that plaintiff has several times made demand upon defendants for the balance due and owing as aforesaid, but the defendants refused to pay, and do now refuse to pay the same; and that there is now due and owing to the plaintiff from said defendants on account of performing labor and furnishing labor and materials, as aforesaid, the sum of One Thousand Seven Hundred Forty-Six Dollars and Eighty-three cents (\$1,746.83), with interest thereon at the rate of six per cent per annum from December 16th, 1946.

Wherefore, plaintiff prays judgment against defendants and each of them, [1*] for the sum of \$1,746.83, with interest at 6% per annum from December 16th, 1946; for \$1.95, cost of filing lien; for a reasonable attorney's fee; and costs of suit; and that the said premises described as Lot 8 and the north 22 feet of Lot 7, Block B, Nome, Alaska, be sold under the decree of this court, according to law and the proceeds be applied in payment of said judgment; and that in case of deficiency arising from such sale, that the plaintiff have judgment for such deficiency and have execution thereof; and

* Page numbering appearing at foot of page of original certified Transcript of Record.

for such further relief as may be just and equitable.

/s/ **C. C. TANNER,**

Attorney for Plaintiff. [2]

(Duly Verified.)

EXHIBIT A

NOTICE OF CLAIM OF LIEN ON REAL PROPERTY

Notice is hereby given that a short time prior to Sept. 10th, 1946, Mr. Ben F. Gillette and Irene, his wife, of Nome, Alaska, employed and authorized Bill Gillis of Nome, Alaska, to remove a certain frame dwelling house owned by them, from Lot 1, Block L, Nome, Alaska, to premises owned by them in Nome, Alaska, and described as Lot 8, and the North 22 feet of Lot 7; to place, erect, alter and repair said building on its new location; and to furnish and supply the necessary labor, and the locally available materials necessary and practicable to accomplish the desired results.

That the said Bill Gillis commenced the employment aforesaid the 10th day of Sept., 1946, and ended such employment, and the furnishings of labor and materials, as aforesaid, on the 15th day of December (inclusive), 1946.

That under and by virtue of said employment the said Bill Gillis furnished and supplied 987 hours of labor at the regular and reasonable cost and charge of \$2,220.75; and materials, which actually went into the construction, alteration and repair of the aforementioned building, at the actual cost and

reasonable charge of \$526.08: Making a total cost and charge for labor and materials of \$2,746.83.

That the sum of \$1,000.00 has been paid on this account, leaving a balance now due and owing of \$1,746.83, after allowing and deducting all credits and offsets.

That a lien is claimed by Bill Gillis for the aforesaid sum of \$1,746.83, against the premises in Nome, Alaska, described as Lot 8, and the North 22 feet of Lot 7, all in Block B, including the residence building situate and located thereon.

That the premises against which this lien is claimed, are owned by Ben F. Gillette and Irene, his wife, of Nome, Alaska.

/s/ BILL GILLIS,
Lien Claimant.

United States of America,
Territory of Alaska—ss.

Bill Gillis, being first duly sworn on oath deposes and says: I am claimant named in the foregoing claims of lien. I have read and know the contents thereof. All things stated therein are true as I verily believe.

/s/ BILL GILLIS,

Subscribed and Sworn to before me the 14th day of March, 1947.

[Seal] /s/ C. C. TANNER,
 Notary Public for Alaska.
My Commission expires July 18, 1950.

[Endorsed]: Filed Sept. 13, 1947. [3]

[Title of District Court and Cause.]

DETAILED STATEMENT OF ACCOUNT

Comes now plaintiff herein and files detailed items of the account sued upon in this action and particularly in reference to paragraph 1 of the Complaint:

A. Items of Labor

(1) Wrecking, cleaning off and removing unsuitable concrete foundation forms prepared by Bud Harper for new location of house on Lot 8 and the No. 22 ft. of Lot 7, Block B, Nome, Alaska.

(2) Backfilling of basement on new house location to bring footing level to grade as specified and ordered by owners.

(3) Erecting on new house location, footing and wall concrete forms for full basement, plus an addition as specified by owners; all of which included the hauling and installing of reinforcement iron.

(4) Mixing, and pouring concrete to grade as specified by owners for footings and 9 in. basement walls.

(5) Stripping forms and removal of same after the pouring and setting of concrete.

(6) Raising house from old foundation on Lot 1, Block L, Nome, Alaska, and placing same on skids, preparatory to removal to new location.

(7) Moving house to new location.

(8) Raising, lining up and placing house on new location foundation.

(9) Framing a new addition to house on its new location and installing in connection therewith

a triple window frame and three sash, an outside door frame, roof valley tin, shingles, celote, siding strips, corner boards and felt paper, all in so far as materials were available and all in accordance with owner's specifications.

(10) Applying asbestos shingles to house including addition, when supplied by owners.

(11) Remodeling kitchen and old stairway of house in accordance with owners directions.

(12) Placing tailings gravel for backfill, in and around the basement walls of the new location of house, all as directed by owners. [4]

B. Materials furnished and other items of expense.

6 pc. 4/8½ black celotex at \$4.00.....	\$24.00
3 windows—1 triple frame—	
1 O. S. door frame.....	52.30
Roof valley tin and bracket.....	3.50
7 concrete flue blocks at \$2.95.....	20.65
1 keg 16 D commons.....	12.00
1 keg 8 D commons.....	12.00
1 keg 6 D commons.....	12.00
Form wire	10.00
8 pcs. 2/12-16 ft.	31.00
1 bunch wood shingles.....	3.50
5 pcs. 1/4-12 ft. No. 1 fir finish.....	3.50
3 bunches siding strips.....	1.50
2 lbs. siding nails.....	.40
3 rolls 15 lb. felt.....	11.35
20 lbs. 2 D. shingle nails.....	2.40
Sand and gravel for backfill and concrete.....	261.00
Rent on Cat and concrete mixer.....	64.00
Tax on materials furnished.....	1.47
	—
	\$ 526.08

Labor from Sept. 10 inc. Dec. 16 (exclusive), 1946	
987 hours	\$2,220.75
<hr/>	
Total	\$2,746.83
10-15-46 on account	1,000.00
<hr/>	
	\$1,746.83

Dated November 5, 1947.

/s/ W. M. GILLIS.

(Acknowledgment of Service.)

[Title of District Court and Cause.]

ANSWER

Answering the Complaint of the plaintiff, the defendants admit, deny and allege:

I.

Answering Paragraph 1 of said Complaint, defendants admit that plaintiff is now and at all times mentioned in said Complaint, was a contractor and builder doing business at Nome, Alaska, and that the defendants are and were the owners of Lot 1, in Block L, and Lot 8 and the No. 22 ft. of Lot 7 in Block B, and the building formerly upon Lot 1, in Block L, Nome, Alaska, and that said building is now situate on Lot 8 and the No. 22 ft. of Lot 7, in Block B in said city; and except as hereinafter affirmatively alleged, deny generally all other allegations in said paragraph 1 of said Complaint.

II.

Answering paragraph 3 of said Complaint, defendants have no knowledge or information suffi-

cient to form a belief as to such allegations and therefore, deny the same.

III.

Answering paragraph 4 of said Complaint, defendants admit that the plaintiff filed a purported lien in the office of the Recorder for the Cape Nome Precinct, Second Division, Alaska, on the 14th day of March, 1947, and that a purported copy of such lien is attached to said Complaint; and defendants deny generally all other allegations set forth in said paragraph 4.

IV.

Answering paragraph 5 of said Complaint, defendants admit that they paid to the plaintiff the sum of \$1,000.00 on account of work done by him for moving the house of the defendants from Lot 1, Block L, to Lot 8 and the No. 22 ft. of Lot 7, in Block B, pursuant to the agreement hereinafter affirmatively alleged and the defendants otherwise deny generally all of the allegations in said paragraph 5 of said Complaint.

V.

Further answering plaintiff's Complaint and by way of Cross Complaint, defendants allege that on or about the 8th day of August, 1946, plaintiff and defendants entered into an agreement wherein and whereby the plaintiff agreed to move, in a skillful and workmanlike manner, the residence of the defendants located on Lot 1, Block L, on the south side of Front Street, to Lot 8 and the No. 22 ft. of Lot 7 in Block B, in Nome, Alaska, which said lots and

residence were then and now are owned by the defendants; and under the terms of which said agreement, the plaintiff was to pour a full cement basement, in a skillful and workmanlike manner, for said residence at the place to which the same was to be moved and to build thereon, when said residence was moved, an addition of the size of 8 ft. x 30 ft. across the back and enclose a porch to be used for a dining room of the size 7 ft. x 17 ft. on the east side, and to complete the same in a skillful and workmanlike manner for occupancy. And to take the heavy timbers of the size 6" x 8" from the bulkhead on Lot 1 Block L on the south side of Front Street and use them as posts in the concrete basement, under the residence, when moved, as braces. And to have said building moved and completed as aforesaid in the month of October, 1946. And under the terms and conditions of said agreement, all materials were to be furnished by the defendants and for which the defendants promised and agreed to pay to the plaintiff the sum of \$2,872.28. [6]

VI.

That prior to the commencement of the moving of said dwelling and at the request of the plaintiff, the defendants paid to the plaintiff upon such contract the sum of \$1,000.00.

That the plaintiff in violation of said agreement, failed, neglected and refused to move said residence to said Lot 8 and the No. 22 ft. of Lot 7 in Block B until on or about the 12th day of November, 1946, and after freezing weather.

VIII.

In the latter part of January, 1947, the plaintiff advised the defendants that he was going to do nothing further in connection with the moving of said residence of defendants, or upon such residence, or the concrete basement thereunder. That thereafter the defendants completed said cement basement at a cost of \$327.50 which sum was a reasonable amount therefor.

IX.

That the plaintiff left said residence unbraced by reason of which it sagged in the middle a distance of five inches and until the doors in the building would not open and the defendants were compelled to have said building raised and five bracing posts put thereunder and for which they expended the sum of \$190.00.

X.

That the defendants had thawed and excavated a sump, in the basement of said dwelling, and expended therefor \$39.75, which said sump the plaintiff, wantonly and negligently filled in and the same became a total loss to the defendants.

XI.

That the plaintiff in the moving of said dwelling after freezing weather had begun, negligently left the basement of said building open by reason of which the ground floor of the basement froze and plumbing was damaged, and to repair it the defendants have expended the sum of not less than \$107.89.

XII.

That in the moving of said residence, the plaintiff carelessly and negligently failed to sufficiently brace a concrete block chimney, so that it was practically ruined and to repair it the defendants have paid the sum of \$100.00.

XIII.

That the plaintiff failed, neglected and refused to complete the addition to said residence to be used for a dining room and defendants were compelled to complete the same at a cost of \$260.00.

XIV.

That the plaintiff removed and took away from said premises one Burks pressure pump, which has never been returned to the defendants, of the value of \$150.00.

XV.

That in the moving of said residence, the plaintiff cut off one corner of said residence and failed, neglected and refused to repair the same, and the cost of such repair will be at least \$100.00.

XVI.

That in the pouring of the walls of said cement basement the plaintiff negligently poured the same without proper foundation by reason of which the walls of said basement cracked in diverse places and the water now seeps through the walls into the basement, by reason of which the defendants have been damaged in the sum of \$500.00. [7]

XVII.

That by reason of the plaintiff failing to move said building and have the same ready for occup-

ancy as provided for in said agreement, the defendants were unable to move into said residence before the 15th day of February, 1947, and were compelled to expend for room rent during such period that they were kept from the occupancy of such residence, in the sum of \$410.00; and were compelled to board at the restaurants during such period and for such board they expended the sum of \$412.00.

XVIII.

That by reason of the breach of said contract by the plaintiff and his failure to move said dwelling and have the same ready for occupancy as provided for in said agreement, the defendants have been damaged in the sums and amounts as herebefore stated and in the total sum of \$2,597.14.

Wherefore the defendants pray judgment against the plaintiff for the sum of \$724.86; and for the costs and disbursements herein incurred, including a reasonable attorney's fee.

/s/ O. D. COCHRAN,
Attorney for Defendants.

(Duly Verified.)

[Endorsed]: Filed Nov. 26, 1947.

[8]

[Title of District Court and Cause.]

REPLY

In reply to defendants answer filed herein, plaintiff admits, denies and alleges as follows:

1.

Replying to paragraph V of said answer, plaintiff admits and alleges that on or about the 8th day of August, 1946, he was approached by defendants in reference to furnishing the work and labor necessary to do the jobs for defendants as outlined in said paragraph V, and that at the time defendants stated that all materials would be furnished by them: That plaintiff then and there informed defendants that he was tied up doing contract work and that in the event he undertook the work for defendants, their work would have to be wedged in between these contract jobs. Plaintiff also admits, that at the request of defendants he furnished them with an estimated labor cost bill which was in the amount of \$2,872.28; that defendants stated they considered the estimate of labor too high, but later notified plaintiff to go ahead and do the work.

Except as admitted herein, plaintiff denies every allegation in said paragraph V contained.

2.

Replying to paragraph VI of defendants answer, plaintiff acknowledges receipt from defendants of \$1,000.00 paid on account of work being then performed under defendants' "go ahead" order set forth in paragraph 1 herein just above, but that said sum was less than the amount or sum then due plaintiff for the work he had already performed for them.

Except as herein admitted, plaintiff denies all allegations in said paragraph VI contained.

3.

Replying to paragraphs VIII of defendants' answer, plaintiff admits telling defendant Ben F. Gillette that he would do no more work for defendants but that the statement was made after defendant Irene Gillette had ordered plaintiff to discontinue the work as affirmatively alleged hereinafter.

Due to lack of information, plaintiff denies all other allegations in said paragraphs VIII contained.

4.

Replying to paragraph IX of defendants' answer, plaintiff, because of lack of information, denies all allegations therein contained; and alleges that if any sagging took place as alleged, it took place after work had been stopped by defendant Irene Gillette, and was not the fault of plaintiff.

5.

Replying to paragraph X of defendants' answer, because of lack of information, plaintiff denies all allegations therein contained; and alleges that if a sump was filled in as alleged, it was filled in by reason of back-fill placed at the direction of defendants and without acknowledge on the part of plaintiff of any such sump. [9]

6.

Replying to paragraph XI of defendants' answer, plaintiff because of lack of information, denies all allegations therein contained; and alleges that plaintiff had nothing whatsoever to do with the plumbing of defendants' residence either before or after it was moved.

7.

Replying to paragraph XII of defendants' answer, plaintiff denies all allegations therein contained.

8.

Replying to paragraph XIII of defendants' answer, plaintiff, because of lack of information, denies all allegations therein contained; and alleges that prior to the time work was stopped by defendant Irene Gillette, materials were not available for the completion of the dining room as alleged.

9.

Replying to paragraph XIV of defendants' answer, plaintiff denies all allegations therein contained.

10.

Replying to paragraph XV of defendants' answer, plaintiff admits cutting off a corner of the cornice of the residence building in order to get the building in place and that he did not repair the same, but alleges that the cornice was cut off with the knowledge, consent and approval of defendants, and that the same was not repaired due to the fact that defendant Irene Gillette, stopped the work before the repairs could be made.

Plaintiff, due to lack of information, denies all other allegations in said paragraph XV contained.

11.

Replying to paragraph XVI of defendants' answer, plaintiff, due to lack of information denies all allegations therein contained, and alleges that defendants prepared the foundation for the pour-

ing of the cement walls and that the pouring was done in accordance with directions of defendants.

12.

Replying to paragraph XVII of defendants' answer, plaintiff, due to lack of information, denies all allegations therein contained, and alleges that any expenditures made by defendants as alleged, was not the result of breach of contract on the part of plaintiff.

13.

Replying to paragraph XVIII of defendants' answer, plaintiff denies all allegations therein contained.

For further reply to defendants' answer plaintiff alleges:

A.

That although defendants originally agreed that they would furnish all materials necessary to complete the jobs as alleged and for which plaintiff was hired to furnish the labor, from time to time as the work progressed, materials were needed which defendants did not have available, and at such times defendants authorized plaintiff to supply such materials. This plaintiff did as to the materials which he could obtain, and as shown in detail in the "Detailed Statement of Account" filed by plaintiff in this cause. [10]

B.

That on or about the 15th day of December, 1946, in front of the North Pole Bakery, Nome, Alaska, in the presence of plaintiff and another person, defendant Irene Gillette, in response to

an inquiry from plaintiff as to whether or not defendants had obtained certain needed materials for defendants' work at hand, defendant Irene Gillette replied, "No we haven't, and you can just let the whole thing go." That immediately thereafter, because of this order, plaintiff took his workmen from defendants' job and removed his tools.

That sometime after this order by Irene Gillette, and after plaintiff had removed his workmen and tools from defendants' work, defendant Ben F. Gillette made inquiry of as to when he would return and complete defendants' work. That Ben F. Gillette was then and there informed by plaintiff that he had been ordered off the work by Irene Gillette and that he was not returning to do any more work for defendants.

Wherefore, having replied to defendants' answer, plaintiff prays for judgment and decree in accordance with the prayer of his complaint.

/s/ C. C. TANNER,
Attorney for Plaintiff.

(Duly Verified.)

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 11, 1947.

[11]

[Title of District Court and Cause.]

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This cause came on for hearing on the 26th day of December, 1947, before this court without a jury,

C. C. Tanner appearing for the plaintiff and O. D. Cochran appearing for the defendants, and evidence of both parties having been heard, the court reserved decision until the 29th day of March, 1948, at which time a memorandum of Findings and Conclusions was served upon both parties, counsel for defendants having died before such decision was made, and the attorney for plaintiff having since refused to make or file Findings of Fact, Conclusions of Law or Judgment herein, the Court being fully advised in the premises, now makes the following:

FINDINGS OF FACT

I.

That plaintiff is now and was at all times hereinafter mentioned, a contractor and builder, doing business at Nome, Alaska.

II.

That defendants are now and were at all times hereinafter mentioned the owners of Lot 8, and the North 22 feet of Lot 7, Block 5, Nome, Alaska, and the owners of the dwelling house thereon. [12]

III.

That on or about August 8, 1946, plaintiff undertook to pour a full concrete basement on the land described in paragraph two hereof and to move defendants' dwelling house from its then location on the south side of Front Street in Nome, Alaska, to the land described in paragraph two hereof. That said basement and the moving operations

were to be completed in October, 1946, at a cost of Two Thousand Eight Hundred Seventy-two and 28/100 (\$2,872.28) Dollars. That all materials were to be furnished by the defendants. That defendants paid plaintiff on account the sum of One Thousand (\$1,000.00) Dollars on October 10, 1946. That plaintiff did not complete the moving of the house in the month of October, 1946, but continued to work thereon from time to time until December 15, 1946, at which time he abandoned the work.

IV.

That on March 14, 1947, plaintiff filed his claim of lien for the sum of Two Thousand Seven Hundred Forty-six and 83/100 (\$2,746.83) Dollars, in which he gave credit to the defendants for One Thousand (\$1,000.00) Dollars advanced, his claim of lien being thereby reduced to One Thousand Seven Hundred Forty-six and 83/100 (\$1,746.83) Dollars; that said claim of lien was filed in the office of the recorder of the Cape Nome Precinct, Second Division, Territory of Alaska.

V.

That after the abandonment by the plaintiff of the work on defendants' house, the defendants completed the full concrete basement which plaintiff had failed to complete at a cost to them in the sum of Three Hundred Twenty-seven and 50/100 (\$327.50) Dollars. [13]

VI.

That the plaintiff left the dwelling house of the defendants unbraced by reason of which it sagged

in the middle a distance of five inches and until the doors in the building would not open and the defendants were compelled to have said building raised and five bracing posts put thereunder and for which they expended the sum of One Hundred Ninety (\$190.00) Dollars.

VII.

That the defendants had thawed and excavated a sump, in the basement of said dwelling, and expended therefor the sum of Thirty-nine and 75/100 (\$39.75) Dollars, which said sump the plaintiff wantonly and negligently filled in and the same became a total loss to the defendants.

VIII.

That the plaintiff is not shown to be responsible for any damage to the concrete block chimney, for which defendants claim One Hundred (\$100.00) Dollars.

IX.

That the plaintiff is shown to be responsible for failure to complete the addition to said dwelling house to be used as a dining room, for which defendants claim Two Hundred Sixty (\$260.00) Dollars.

X.

That the plaintiff is not shown to be responsible for the removal of the Burks Pressure Pump for which defendants claim One Hundred Fifty (\$150.00) Dollars.

XI.

That plaintiff is not shown to be responsible for having left the basement of the dwelling open, or

for damage [14] by frost to the basement floor and the plumbing, for which defendants claim One Hundred Seven and 89/100 (\$107.89) Dollars.

XII.

The plaintiff is not shown to be responsible for the cutting off one corner of the dwelling house, for which defendants claim One Hundred (\$100.00) Dollars.

XIII.

That plaintiff is not shown to be responsible for negligently pouring the concrete basement walls without proper foundation, for which defendants claim the sum of Five Hundred (\$500.00) Dollars.

XIV.

That plaintiff is not shown to be responsible for defendants' room rent, as alleged and claimed in paragraph XVII of the defendants' answer at Four Hundred Ten (\$410.00) Dollars, and defendants' board as alleged therein at Four Hundred Twelve (\$412.00) Dollars.

XV.

That in the moving operations of the plaintiff, he furnished materials at the request of the defendants to the value of Five Hundred Twenty-six and 08/100 (\$526.08) Dollars.

And from the foregoing Findings of Fact, the Court concludes:

CONCLUSIONS OF LAW

I.

That plaintiff is entitled to judgment against defendants for materials furnished by him at the

instance [15] of the defendants in the sum of Five Hundred Twenty-six and 08/100 (\$526.08) Dollars.

II.

That defendants are entitled to judgment against the plaintiff in the sum of Eight Hundred Seventeen and 25/100 (\$817.25) Dollars.

III.

That no attorneys' fees or costs be allowed either party.

IV.

That on settlement, the lien filed by plaintiff be discharged.

Dated at Nome, Alaska, this 27th day of August, 1948.

/s/ JOSEPH W. KEHOE,
District Judge.

[Endorsed]: Filed Aug. 27, 1948.

[16]

In the District Court for the Territory of Alaska,
Second Division.

No. 3737—Civil

W. M. GILLIS,

Plaintiff,
vs.

BEN F. GILLETTE and IRENE GILLETTE,
Defendants.

JUDGMENT

This cause having come on for trial on the 26th day of December, 1947, before the Court, without

a jury, C. C. Tanner appearing for the plaintiff and O. D. Cochran appearing for the defendants, and the Court having heard testimony of both plaintiff and defendants, and the arguments of counsel, and having reserved decision until the 29th day of March, 1948, at which time a memorandum of the Court's decision was served upon both parties, counsel for the defendants having died before such decision was made, and the attorney for plaintiff having since refused to make or file Findings of Fact, Conclusions of Law or Judgment herein, and the Court having now made and filed Findings of Fact and Conclusions of Law herein, and being fully advised in the premises, does now adjudge:

1. That the plaintiff is entitled to judgment against defendants for materials furnished by him at the instance of the defendants in the sum of Five Hundred Twenty-six and 08/100 (\$526.08) Dollars.
2. That defendants are entitled to judgment against the plaintiff in the sum of Eight Hundred Seventeen and 25/100 (\$817.25) Dollars.
3. That no attorneys' fees or costs be allowed either party. [17]
4. That on settlement, the lien filed by plaintiff be discharged.

Dated at Nome, Alaska, this 27th day of August, 1948.

/s/ JOSEPH W. KEHOE,
District Judge.

[Endorsed]: Filed Aug. 27, 1948.

[18]

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL

The above-named Plaintiff, W. M. Gillis, considering himself aggrieved by the Final Judgment of this Court made and entered in the above-entitled action on the 27th day of August, 1948, in favor of the Defendants and against the Plaintiff, for the sum of \$291.17, does hereby appeal from said Judgment to the United States Circuit Court of Appeals for the Ninth Circuit: said Appeal being taken to the extent and for the reasons set forth in the Assignment of Errors, which is filed herewith,

Wherefore, Plaintiff prays that this Appeal be allowed: that a Citation issue to the Defendants in accordance with law: and that a Transcript of the record, proceedings and papers upon which the aforesaid Judgment was made be certified to and sent to the Appellate Court:

The Plaintiff Further Prays that the Court fix the amount of cost bond required of Plaintiff on Appeal.

Dated the 20th day of October, 1948.

C. C. TANNER,
Attorney for Plaintiff,
W. M. Gillis.

[Endorsed]: Filed Oct. 20, 1948.

[19]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes Now W. M. Gillis, Plaintiff herein, and alleges that the Final Judgment made and entered in the above-entitled cause on the 27th day of August, 1948, is erroneous and unjust to him and is not in conformity with the Findings of Fact filed in said cause: and, in support of the foregoing allegations, he now sets forth the Assignment of Errors upon which he will rely on Appeal.

1.

For the purpose of this Appeal the Plaintiff accepts as true the Court's Findings of Fact and contends that the Court's Conclusion of Law and Judgment are not consistent with such findings as hereinafter set forth:

2.

The Court erred in not concluding as a matter of law that under the contract of labor between Plaintiff and Defendants, that Plaintiff was entitled to judgment for the contract cost of labor (\$2,872.28), minus the sum of \$1,000.00 paid on account, and the damages found owing to Defendants in the total sum of \$817.25. [20]

3.

The Court erred in not concluding as a matter of law that Plaintiff was entitled to judgment for a reasonable attorney's fee designated by the Court.

4.

The Court erred in not concluding as a matter of law that Plaintiff was entitled to judgment for the sum of \$1.95, the cost of filing his lien.

5.

The Court erred in not concluding as a matter of law that Plaintiff was entitled to judgment for costs.

6.

The Court erred in not concluding as a matter of law that Plaintiff was entitled to a judgment of foreclosure against Defendants' property described as Lot Eight (L. 8) and the North twenty-two feet (No. 22') of Lot Seven (L. 7), Block "B" (Bl. B), Nome, Alaska, for his unpaid labor bill in the sum of \$1,055.03, plus costs of materials furnished in the sum of \$526.08, plus a designated, reasonable attorney's fee, plus the lien filing fee of \$1.95, plus costs.

7.

The Court erred in not finding as a matter of law that Plaintiff was entitled to judgment for interest at the rate of 6% per annum on the sum of \$1,581.11 (labor bill of \$1,055.03, plus costs of materials furnished \$526.08) from the 16th day of December, 1946, until paid.

8.

The Court erred in not giving and entering judgment in favor of Plaintiff for labor performed in the sum of \$1,055.03; said sum being the difference between the contract price (\$2,872.28), minus the sum paid Plaintiff on account (\$1,000.00) and the damages allowed Defendants (\$817.25). [21]

9.

The Court erred in not giving and entering judgment in favor of Plaintiff for a designated, reasonable attorney's fee.

10.

The Court erred in not giving and entering judgment in favor of Plaintiff for his lien filing fee of \$1.95.

11.

The Court erred in not giving and entering judgment in favor of Plaintiff for his costs.

12.

The Court erred in not giving and entering judgment of lien foreclosure against Defendants' premises described as Lot Eight (L. 8) and the North twenty-two feet (No. 22') of Lot Seven (L. 7), Block "B" (Bl. B), Nome, Alaska, for the sum of \$1,581.11, plus the lien filing fee of \$1.95, plus a designated, reasonable attorney's fee, plus Plaintiff's costs.

13.

The Court erred in not giving and entering judgment in favor of Plaintiff for interest at the rate of 6% per annum on the sum of \$1,581.11 from the 16th day of December, 1946, until paid.

Wherefore, Plaintiff prays that said Judgment be reversed, revised, corrected and amended, all in accordance with the foregoing Assignment of Errors, and that the Plaintiff receive Judgment for that which is justly due him.

Dated this 20th day of October, 1948.

/s/ C. C. TANNER,

Attorney for Plaintiff and Appellant.

[Title of District Court and Cause.]

**ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF COST BOND**

This day came Plaintiff, W. M. Gillis, by his attorney, C. C. Tanner, and filed and presented his Petition for Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and his Assignment of Errors, and upon consideration thereof

It Is Now Ordered that said Appeal be, and the same is hereby allowed; and that the Plaintiff shall execute a bond for costs on appeal according to law in the sum which is hereby fixed at \$250.00:

It Is Further Ordered that a Citation issue to the Defendants in accordance with law:

It Is Further Ordered that a transcript of the record, proceedings and papers upon which Judgment in this cause was made be certified to and sent to the Appellate Court aforesaid.

Dated at Nome, Alaska, this 20th day of October, 1948.

/s/ JOSEPH W. KEHOE,
Judge of the District Court, for the Territory of
Alaska, Second Division.

Presented by:

/s/ C. C. TANNER,

Attorney for Plaintiff and Appellant.

[Endorsed]: Filed Oct. 20, 1948.

[23]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents:

That we, W. M. Gillis, as principal, Joseph Wallace of Nome, Alaska, and Axel Edman of Nome, Alaska, as sureties, are hereby held and firmly bound unto Ben F. Gillette and Irene Gillette, above-named Defendants, in the sum of \$250, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 28th day of October, 1948.

The condition of the above obligation is such that:

Whereas, the above-named, bounden Plaintiff has filed his Petition of Appeal and is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain Final Judgment made and entered by the Judge of the above-entitled Court, on the 27th day of August, 1948, [24] wherein the above-named Defendants were given Judgment against the above-named Plaintiff for the sum of \$291.17, and

Whereas, said Plaintiff is appealing from said Judgment to the extent and in accordance with his Assignment of Errors filed herein on appeal, to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse, revise, correct and amend said Judgment,

Now Therefore, if the Plaintiff, above-named, shall prosecute said appeal to effect and answer

all costs that may be adjudged against him if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

/s/ W. M. GILLIS,
Principal.

/s/ JOSEPH WALLACE,
Surety.

/s/ AXEL EDMAN,
Surety.

United States of America,
Territory of Alaska—ss.

Joseph Wallace and Axel Edman being first duly sworn, each for himself, says:

I am one of the sureties who executed the foregoing Bond on Appeal. I am a resident of Nome, Alaska. I am not a counselor or attorney at law, Marshal, Deputy Marshal, Commissioner, Clerk of any Court or other officer of any Court. I am worth the sum of \$500.00 over and above all my just debts and liabilities and exclusive of property exempt from execution.

/s/ JOSEPH WALLACE,
/s/ AXEL EDMAN.

Subscribed and Sworn to before me this 28th day of October, 1948.

(Seal) /s/ C. D. ANDERSON,
Notary Public in and for the Territory of Alaska,
Residing at Nome. My Commission expires Oct.
27, 1951.

The foregoing Bond is approved this 4th day of October, 1948.

/s/ JOSEPH W. KEHOE,
District Judge.

[Endorsed]: Filed Nov. 5, 1948.

[25]

[Title of District Court and Cause.]

STIPULATION RE: PRINTING OF RECORD

It is hereby stipulated, by and between the above-named parties, that in printing the papers and records to be used on the hearing on Appeal in the above-entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the Court and Cause in full and on all papers shall be omitted, except on the first page of said record and that there shall be inserted in place of said title on all papers used as a part of said records the words "Title of Court and Cause". Also, that all endorsements on said papers used as a part of said record may be omitted, except as to the Clerk's file marks and the admission of service.

Dated this 6th day of December, 1948.

W. M. GILLIS,
By /s/ C. C. TANNER,
His Attorney.

/s/ IRENE A. GILLETTE,
/s/ BEN F. GLLETTE,
Defendants.

[Endorsed]: Filed Dec. 23, 1948.

[26]

[Title of District Court and Cause.]

**ORDER EXTENDING TIME FOR FILING
TRANSCRIPT ON APPEAL**

A Motion, supported by Affidavit, having on the 2nd day of December, 1948, been duly presented to the Court by W. M. Gillis, Plaintiff and Appellant herein, praying for an extension of time within which the Clerk of this Court may file Transcript on Appeal with the United States Circuit Court of Appeals at San Francisco, California, and the Court considering the Motion well taken,

It Is Now Ordered that the time for the filing of such Transcript be, and the same is hereby extended, up to and including the 17th day of January, 1949.

Dated this 2nd day of December, 1948.

/s/ JOSEPH W. KEHOE,
United States District Judge.

[Endorsed]: Filed Dec. 2, 1948.

[27]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To: Norvin W. Lewis, Clerk of the above-entitled Court.

W. M. Gillis, Plaintiff and Appellant herein, hereby requests that you prepare transcript of record on Appeal in the above-entitled cause and file the transcript in the office of the Clerk of the United

States Circuit Court of Appeals for the Ninth Circuit, sitting in San Francisco, California:

A designation of the records and papers to be included in such transcript follows:

1. Complaint.
2. Plaintiff's "Detailed Statement of Account".
3. Answer.
4. Reply.
5. Findings of Fact and Conclusions of Law.
6. Judgment.
7. Petition for Appeal.
8. Assignment of Errors.
9. Order Allowing Appeal and Fixing Cost Bond.
10. Cost Bond on Appeal.
11. Citation.
12. Stipulation on Printing of Record.
13. Praecept.
14. Also, included in this transcript, any Order this Court may hereinafter make extending the time for filing the transcript. [28]

Please prepare this transcript as required by law and the rules and orders of this Court and the Circuit Court of Appeals for the Ninth Circuit, and forward same to the said Appellate Court at San Francisco, California, so that it may be docketed therein on, or before, the 13th day of December, 1948.

Dated this 8th day of November, 1948.

/s/ C. C. TANNER,

Attorney for Plaintiff and Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 23, 1948.

[29]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Territory of Alaska, Second Division—ss.

I, Norvin W. Lewis, Clerk of the District Court of the Territory of Alaska, Second Division, do hereby certify that the foregoing transcript on Appeal consisting of typewritten pages, from 1 to 29 both inclusive, is a true and exact transcript of the Complaint, Plaintiff's "Detailed Statement of Account", Answer, Reply, Findings of Fact and Conclusions of Law, Judgment, Petition for Appeal, Assignment of Errors, Order Allowing Appeal and Fixing Cost Bond, Cost Bond on Appeal, Stipulation on Printing of Record, Order Enlarging Time to File Transcript and Praecep in the case of W. M. (alias Bill) Gillis, Plaintiff vs. Ben F. Gillette and Irene Gillette, Defendants, No. 3737 this Court and of the whole thereof, as appears from the Records and Files in my Office at Nome, Alaska, and I further certify that the Original Citation on Appeal is annexed to this Transcript.

Cost of Transcript \$12.40 paid by C. C. Tanner,
Attorney for Plaintiff, W. M. Gillis.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court this 31st day of December, 1948.

(Seal) /s/ NORVIN W. LEWIS,
Clerk.

[Title of District Court and Cause.]

CITATION ON APPEAL

To: The Defendants above-named, Ben F. Gillette and Irene Gillette, and to their attorney, whoever he may be,

Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California, within forty (40) days from the date of this Writ, pursuant to an Appeal filed in the Clerk's Office of the District Court of the Territory of Alaska, Second Division, wherein W. M. Gillis is Plaintiff and Appellant, and Ben F. Gillette and Irene Gillette are Defendants and Appellees, to show cause, if any there be, why the Final Judgment made and entered in said cause on the 27th day of August, 1948, should not be reversed, revised, corrected and amended in accordance with Appellant's Assignment of Errors filed on Appeal herein.

In Witness Whereof, I, Joseph W. Kehoe, Judge of the District Court, for the Territory of Alaska, Second Division, have hereunto set my hand the 4th day of November, 1948.

/s/ JOSEPH W. KEHOE,
District Judge.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 23, 1948.

[Endorsed]: No. 12145. United States Court of Appeals for the Ninth Circuit. W. M. (alias, Bill) Gillis, Appellant, vs. Ben F. Gillette and Irene Gillette, Appellees. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Second Division.

Filed January 4, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for
the Ninth Circuit

No. 12,145

W. M. (ALIAS, BILL) GILLIS,

Appellant,

vs.

BEN F. GILLETTE and IRENE GILLETTE,
Appellees.

Appeal from the District Court for the Territory of
Alaska, Second Division

Oct. 4, 1949

OPINION

Before: Healy, Bone and Orr,
Circuit Judges.

Bone, Circuit Judge.

Appellant, Gillis, brought this action in the District Court for the Territory of Alaska to recover from appellees, Gillette and wife, judgment in the sum of \$1,746.83 plus interest, costs and attorney's fee, and to enforce said judgment by foreclosure of a labor and material lien which had theretofore been filed against appellees' real property. The \$1,746.83 was alleged to represent the difference between the reasonable value (\$2,746.83) of labor and materials furnished by Gillis in moving, altering and repairing a house owned by the Gillettes, and a \$1,000.00 payment theretofore made by appellees.

Appellees' answer admitted that a purported lien

had been filed by appellant and that appellees had paid the \$1,000.00 to appellant, and denied other allegations in the complaint. By way of cross-complaint appellees alleged that the parties had entered into an agreement whereby appellant was to move, alter and repair appellees' house for the sum of \$2,872.28, the work to be completed in October, 1946. Appellant was to furnish the labor and appellees to provide the materials. They further alleged that the house was not moved until November 12, 1946, (after freezing weather) and that certain alterations and repairs were not completed by appellant; that by reason of appellant's delay, failure to complete the work, and negligent performance of work done appellees had sustained damages in the total sum of \$2,597.14, whereupon they prayed for judgment in the sum of \$724.86. (This latter amount clearly represents the difference between the alleged damages [\$2,597.14] and the unpaid amount of the contract price [\$1,872.28].)

The court made Findings of Fact and Conclusions of Law and entered judgment thereon. The material Findings, briefly stated, were that the parties had entered into an agreement as alleged in appellees' answer, that appellant had abandoned the work before completion, that as the result of appellant's breaches appellees had sustained various items of damage in the total sum of \$817.25 (most of which represented the cost of completing the work), and that appellant had furnished, at the request of appellees, materials to the value of \$526.08.

The court's Conclusions of Law were that appel-

lant was entitled to judgment in the sum of \$526.08 (the value of materials furnished by him; no recovery for labor was allowed), that appellees were entitled to judgment on their cross-complaint in the sum of \$817.25, that neither party was entitled to attorney's fee or costs, and that "on settlement," the lien filed by appellant would be discharged. Judgment was entered in accordance with these conclusions.

Appellant contends that the Conclusions of Law are inconsistent with, and not supported by, the Findings of Fact entered by the court. We agree with this contention.

One of the issues of this case as disclosed by the pleadings concerns whether or not appellant's abandonment was willful or whether it was done in compliance with appellees' request. In his reply appellant asserted that he had stopped work because ordered so to do by Mrs. Gillette. The trial court should have made a finding on this issue.

In other respects the Findings appear to be inconsistent. The court found that under the terms of the agreement all of the materials were to be furnished by appellees. In another finding it found that appellant had furnished materials at the request of appellees to the value of \$526.08, and judgment for this amount was entered for appellant. Since these materials were furnished "in the moving operations," they may have been furnished as the result of and in compliance with a modification of the original agreement. The trial court should make a finding concerning the question of whether these

materials were furnished in compliance with a modification of the original agreement or in compliance with a new and separate agreement.

If the court finds that the materials were furnished by appellant under a separate agreement (to furnish materials) then the court should further find whether or not the claim of lien for these materials was filed within the proper period of time after appellant ceased to furnish the materials.

Without additional findings of the character above indicated, we are unable to determine the validity of the Conclusions of Law and the Judgment. The case is therefore remanded to the trial court with directions to enter such further Findings with leave to amend the Conclusions of Law and Judgment to conform to the Findings.

[Endorsed]: Opinion. Filed Oct. 4, 1949. Paul P. O'Brien, Clerk.

In the District Court for the Territory of Alaska
Second Division

No. 3737 Civil

W. M. GILLIS,

Plaintiff,

vs.

BEN F. & IRENE GILLETTE,

Defendants.

FINDINGS OF FACTS AND CONCLUSIONS
OF LAW

This cause came on for trial on the 26th day of December, 1947, before the Court sitting without a

jury, C. C. Tanner appearing as attorney for the plaintiff and O. D. Cochran appearing as attorney for the defendants; and evidence of both parties having been heard, the Court reserved decision until August 27, 1948, at which time Findings of Fact and Conclusions of Law and Judgment were entered and served on both parties; and thereafter an appeal was taken by the plaintiff to the United States Court of Appeals for the Ninth Circuit, which Court of Appeals, on the 14th day of October, 1949, rendered its opinion upon said appeal, by which it remanded said cause to this Court with directions to enter further Findings in accordance with its said opinion, with leave to this Court to amend its Conclusions of Law and Judgment to conform to the Findings, that opinion having been filed herein on the 9th day of November, 1949, the Court being fully advised in the premises, and having reconsidered the pleadings and evidence in said cause in light of the said opinion of the said Court of Appeals, now makes the following:

Findings of Fact

I.

That plaintiff is now and was at all the times hereinafter mentioned a contractor and builder, doing business at Nome, Alaska.

II.

That defendants are now and were at all times hereinafter mentioned the owners of Lot 8 and the

North 22 feet of Lot 7, Block 5, Nome, Alaska, and the owners of the dwelling house thereon.

III.

That on August 8, 1946, plaintiff undertook to pour a full concrete basement on the land described in paragraph II hereof, to move defendants' dwelling house from its then location on the South side of Front Street in Nome, Alaska, across the street to the land described in paragraph II hereof, and to construct an addition to said dwelling house, as shown and directed by the defendants; that by the terms of the agreement, the dwelling house was to be moved in October, 1946. That the moving operations, the pouring of the full concrete basement at the new site of the dwelling house and the construction of the addition thereto were to cost the defendants the sum of Two Thousand Eight Hundred Seventy-two and 28/100 (\$2872.28) Dollars. That on October 10, 1946, defendants paid to plaintiff the sum of One Thousand (\$1000.00) Dollars to apply upon the total cost. That plaintiff did not move the dwelling house during the month of October, 1946, and not until freezing weather had set in, approximately November 12, 1946; that plaintiff continued to work on said dwelling from time to time until December 15, 1946, at which time he abandoned the work, leaving it unfinished in the following particulars:

- (1) Plaintiff failed to complete the full concrete basement.
- (2) Plaintiff left the house unbraced so that it

sagged in the center (5) five inches, so that doors on the main floor would not open.

(3) Plaintiff failed to replace the cornice cut from the dwelling in the moving operations.

(4) Plaintiff negligently filled in and covered the sump in the excavation for the basement of the dwelling.

(5) Plaintiff failed to complete the addition to the dwelling to be used as a dining room.

That plaintiff's abandonment of the work was willful and without cause.

IV.

That during the moving and building operations, the plaintiff, with the consent of the defendants, and as a separate agreement from that in which the defendants were to furnish all materials to be used therein, supplied certain extra services and supplies of the value of Five Hundred Twenty-six and 08/100 (\$526.08) Dollars; that these services and supplies were actually furnished by the defendants, the plaintiff only acting as agent for them in the purchase thereof. That defendants got the benefit for said services and supplies, and that plaintiff paid therefore the full sum of Five Hundred Twenty-six and 08/100 (\$526.08) Dollars.

That all of said services and supplies were furnished between the 12th day of November, 1946, and the 15th day of December, 1946, and the last of said supplies was furnished sometime prior to the 15th day of December, 1946, and more than ninety days prior to the filing of the purported lien herein. That all materials furnished by plaintiff for use in

said dwelling house were purchased in Nome, Alaska, the residence of both plaintiff and defendants, as shown by plaintiff's Exhibits "C", "D" and "E", and might have been purchased and furnished by defendants, and were charged by plaintiff to defendants at retail prices, by express admission of plaintiff. That the sum charged by plaintiff was, and is a charge of the reasonable value thereof.

V.

That in the latter part of January, 1947, plaintiff informed defendants that he was going to do nothing further upon the dwelling house of defendants or the concrete basement thereof; that he then quit and withdrew from the premises. That thereafter the defendants completed said concrete basement at a cost of Three Hundred Twenty-seven and 50/100 (\$327.50) Dollars, which sum was a reasonable amount therefor.

VI.

That plaintiff left said dwelling house unbraced so that it sagged five (5) inches in the center, so that doors on the main floor would not open and defendants were compelled to have said building raised and five bracing posts put thereunder, and for which they expended the sum of One Hundred Ninety and no/100 (\$190.00) Dollars.

VII.

That defendants had thawed and excavated a sump in the basement of said dwelling and expended

therefor the sum of Thirty-nine and 75/100 (\$39.75) Dollars, which said sump the plaintiff wantonly and negligently filled in and the same became a total loss to the defendants.

VIII.

That plaintiff failed, neglected and refused to complete the addition to said dwelling house to be used as a dining room and defendants were compelled to complete the same at a cost of Two Hundred Sixty and no/100 (\$260.00) Dollars.

IX.

That in the moving of the said dwelling house, the plaintiff cut off one corner of the same and failed, neglected and refused to repair the same, and the reasonable cost of the repair thereof will be the sum of One Hundred and no/100 (\$100.00) Dollars.

X.

That the Burks pressure pump for which defendants claim One Hundred Fifty and no/100 (\$150.00) Dollars was not removed from the defendants' dwelling house or property by the plaintiff.

XI.

That plaintiff is not shown to be responsible for having left the basement open, or for any damage by frost to the basement floor and the plumbing for which defendants claim One Hundred Seven and 89/100 (\$107.89) Dollars.

XII.

That plaintiff is not shown to be responsible for

negligently pouring the concrete basement walls without proper foundation, for which defendants claim the sum of Five Hundred and no/100 (\$500.00) Dollars.

XIII.

That plaintiff is not shown to be responsible for defendants' room rent during the moving operations, for which defendants claim Four Hundred Twelve and no/100 (\$412.00) Dollars.

And from the foregoing Findings of Fact, the Court deduces the following:

Conclusions of Law

I.

That plaintiff is not entitled to judgment of foreclosure of the lien for labor furnished and for materials supplied in the moving, repair and building operations on the dwelling house of the defendants filed by the plaintiff on March 14, 1947, and the same should be discharged and cancelled of record.

II.

That plaintiff is entitled to judgment for the value of materials supplied by him and described as follows:

6 pc. 4/8-1/2 Black Celotex @ \$4.00	\$ 24.00
3 windows — 1 triple window frame — one	
O.S. Door Frame	52.30
Roof valley tin and bracket	3.50
7 Concrete flue blocks @ \$2.95	20.65

1 keg 16 D commons	12.00
1 keg 8 D commons	12.00
1 keg 6 D commons	12.00
Form wire	10.00
8 pcs. 2/12-16 ft.	31.01
1 bunch Wood shingles	3.50
5 pcs. 1/4-12 ft. #1 fir finish	3.00
3 bunches Siding strips	1.50
2# Siding nails40
3 rolls 15# Felt	11.35
20# 3 D. Shingle nails	2.40
Sand and Gravel for backfill & concrete ...	261.00
Rent on cat and concrete mixer	64.00
Tax on materials furnished	1.47
<hr/>	
	\$526.08

III.

That defendants are entitled to judgment for damages suffered by them by reason of the wrongful failure of the plaintiff to complete the moving of the defendant's dwelling house within the month of October, 1946, and by reason of his willful abandonment of the work of moving, repair and building operations on said dwelling house in the following particulars:

- (1) For failure to complete the full concrete basement
- \$327.50
- (2) For leaving the house unbraced so that it sagged in the center five (5) inches, so that the doors would not open
- 190.00

(3)	For wantonly and negligently filling in the sump in the basement of defendants' dwelling	39.75
(4)	For willfully failing to complete the addition to the defendants' dwelling house, to be used as a dining room ..	260.00
(5)	For wantonly cutting off a corner of defendants' dwelling house and willfully failing to replace the same	100.00
	That the total sum to which the defendants are entitled is	\$917.25

IV.

That no attorney's fees or costs be allowed either party.

Dated this 2nd day of December, 1949.

/s/ JOSEPH W. KEHOE,
U. S. District Judge.

[Endorsed]: Filed December 2, 1949.

In the District Court for the Territory of Alaska,
Second Division

No. 3737-Civil

W. M. GILLIS,

Plaintiff,

vs.

BEN F. & IRENE GILLETTE,

Defendants..

JUDGMENT

This cause having come on for trial on the 26th day of December, 1947, before the Court without a jury, C. C. Tanner appearing as attorney for the plaintiff and O. D. Cochran appearing as attorney for the defendants, and the Court having heard testimony of both plaintiff and defendants, and the arguments of counsel, having reserved decision until March 29, 1948, at which time a memorandum of the Court's decision was served upon both parties, counsel for the defendants having died before such decision was made, and defendants not being represented by an attorney; and attorney for plaintiff having since refused to make and file Findings of Fact, Conclusions of Law or Judgment herein, and the Court having made Findings of Fact, Conclusions of Law and Judgment, from which Findings, Conclusions and Judgment plaintiff appealed to the United States Court of Appeals for the Ninth Circuit; and thereafter on the 14th day of October, 1949, said United States Court of Appeals rendered

its opinion upon said appeal, remanding said cause to this Court with directions to enter further Findings in accordance with its opinion, with leave to this Court to amend its Conclusions of Law and Judgment to conform to the Findings so made, that opinion having been filed herein on the 9th day of November, 1949, the Court having reconsidered the pleadings and evidence in said cause in the light of the said Opinion of said Court of Appeals, both plaintiff and defendants having been afforded the opportunity to submit Findings, Conclusions and Judgment herein, and neither party having done so, the Court being fully advised in the premises, and having filed its Findings and Conclusions herein,

It Is Hereby Ordered, Adjudged and Decreed:

1. That the lien heretofore filed by the plaintiff upon Lot Eight (8) and the North 22 feet of Lot Seven (7), Block 5, Nome, Alaska, and the dwelling house thereon, all property of the defendants herein, be and the same is hereby discharged and ordered set aside and cancelled of record.

2. That judgment be entered in favor of the defendants and against the plaintiff in the sum of Three Hundred Ninety-one and 17/100 (\$391.17), being the balance in favor of defendants after deduction from the amount of damages due the defendants by reason of the failure of the plaintiff to complete work upon the defendants' dwelling house, to wit, Nine Hundred Seventeen and 25/100 (\$917.25), the reasonable value of the supplies furnished to the defendants by the plaintiff, to wit,

Five Hundred Twenty-six and 08/100 (\$526.08) Dollars; together with interest on said balance of Three Hundred Ninety-one and 17/100 (\$391.17) Dollars at 6% from date until paid, no attorney's fees or costs to be allowed either party.

Dated this 2nd day of December, 1949.

/s/ JOSEPH W. KEHOE,
U. S. District Judge.

[Endorsed]: Filed December 2, 1949.

[Title of District Court and Cause.]

To: Ben F. Gillette and Irene Gillette of Nome, Alaska, and to their Attorney, Chellis Carpenter of 220 Montgomery Street, San Francisco 4, California.

NOTICE OF APPEAL

The Plaintiff herein, W. M. Gillis, hereby gives notice to the above parties that he appeals to the United States Court of Appeals for the Ninth Circuit from the Final Judgment entered in this Action on December 2, 1949.

Dated December 27, 1949.

/s/ C. C. TANNER,
Attorney for Appellant.

[Endorsed]: Filed December 27, 1949.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents:

That we, W. M. Gillis, as principal, Joseph Wallace of Nome, Alaska, and Larry Galvin of Nome, Alaska, as sureties, are hereby held and firmly bound unto Ben F. Gillette and Irene Gillette, above-named Defendants, in the sum of \$250.00, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 27th day of December, 1949.

The condition of the above obligation is such that:

Whereas, the above-named, bounden Plaintiff has filed Notice of Appeal to the United States Court of Appeals for the Ninth Circuit, from that certain Final Judgment made and entered by the Judge of the above-entitled Court, on the Second day of December, 1949,

Now Therefore, if the Plaintiff, above named, shall prosecute said appeal to effect and answer all costs that may be adjudged against him if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

/s/ W. M. GILLIS,
Principal.

/s/ JOSEPH WALLACE,
Surety.

/s/ LARRY GALVIN,
Surety.

United States of America,
Territory of Alaska—ss.

Joseph Wallace and Larry Galvin being first duly sworn, each for himself, says:

I am one of the sureties who executed the foregoing Bond on Appeal. I am a resident of Nome, Alaska. I am not a counselor or attorney at law, Marshal, Deputy Marshal, Commissioner, Clerk of any Court or other officer of any Court. I am worth the sum of \$500.00 over and above all my just debts and liabilities and exclusive of property exempt from execution.

/s/ JOSEPH WALLACE,

/s/ LARRY GALVIN.

Subscribed and Sworn to before me this 27th day of December, 1949.

[Seal] /s/ C. C. TANNER,

Notary Public in and for the Territory of Alaska,
residing at Nome.

My Commission expires July 18, 1950.

[Endorsed]: Filed December 27, 1949.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
TRANSCRIPT OF APPEAL

W. M. Gillis, Plaintiff herein, having on the 27th day of December, 1949, filed Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the Final Judgment of this Court entered the 2nd day of December, 1949; and the said Plaintiff having on the 28th day of December, 1949, filed Motion for Extension of Time within which to file Transcript on Appeal,

It Is Now Ordered that the Plaintiff shall have up to and including the 24th day of March, 1950, within which time to file and docket the Transcript on Appeal in this cause.

Dated the 5th day of January, 1950.

/s/ HARRY E. PRATT,
District Judge for the
Territory of Alaska.

[Endorsed]: Filed January 9, 1950.

【Title of District Court and Cause.】

PRAEICE-DESIGNATION OF RECORD

To the Clerk of the District Court of the United States for the Second Judicial Division, Territory of Alaska:

You are hereby requested to prepare, certify, and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit, San Francisco, California, with reference to the Notice of Appeal heretofore filed by the Plaintiff in the above cause, Transcript of the Record in the above cause prepared and transmitted as required by law and by rules of said Court and to include in the said Transcript the entire record and all the proceedings and evidence in the Action; and include therein two Transcripts of the entire testimony taken in this Court and cause. (Transmittal of the entire Record to the Appellate Court is requested primarily for the reason that the Appellees' attorney resides in San Francisco, California.)

Request is further made that, along with the said Transcript of Record, you transmit the following:

1. Appellant's Statement of Points Relied Upon on Appeal and Designation of Portions of the Record Deemed Necessary for Consideration Thereof.
2. Affidavit of mailing copy of Statement of Points and Designation to Appellees' attorney, Chellis Carpenter, Mills Tower, San Francisco 4, California.
3. Money Order in the sum of \$25.00 for filing

Appeal in the Appellate Court and made payable to the Clerk thereof.

4. All stipulations in reference to this Appeal and which are delivered to you prior to transmittal of the Record: Also all affidavits in re service on Appellees' attorney.

Dated January 30, 1950.

/s/ C. C. TANNER,
Attorney for Plaintiff and
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed January 30, 1950.

In the District Court for the Territory of Alaska,
Second Division
Case No. 3737 Civil

W. M. GILLIS,

Plaintiff,

vs.

BEN F. & IRENE GILLETTE,

Defendants.

Appearances:

C. C. TANNER,
Nome, Alaska,
Attorney for plaintiff.

O. D. COCHRAN,
Nome, Alaska,
Attorney for defendants.

TRANSCRIPT OF TESTIMONY

The above cause came on regularly for trial at 10 o'clock, a.m., December 26, 1947, before Honorable Joseph W. Kehoe, at Nome, Alaska, and following is transcript of the testimony:

Court: Call your first witness.

Mr. Tanner: Call Mr. Gillis, please.

W. M. GILLIS

sworn

Direct Examination

By Mr. Tanner:

Q. State your name please.

(Testimony of W. M. Gillis.)

A. W. M. Gillis.

Q. Are you commonly known as Bill Gillis?

A. I am.

Q. What is your age? A. 45.

Q. Are you a resident of Nome, Alaska?

A. I am.

Q. How long have you been in Nome?

A. A little over three years.

Q. What is your occupation or business, Mr. Gillis? A. Building contractor.

Q. And how long have you been in that business?

A. Oh, approximately 25 or 30 years.

Q. How long in Nome?

A. A little over three years. [1*]

Q. You are the plaintiff in this present action?

A. Yes.

Q. During the fall of 1946, did you perform any services in your line for the defendants in this action? A. I did.

Q. Now, Mr. Gillis, in general, what did that consist of?

A. That consisted of moving a house to the opposite side of the street, pouring a concrete basement, building on an addition to the house and several other small items.

Q. And, Mr. Gillis, did you furnish the labor for this work? A. Yes, sir.

Q. Did you furnish anything else?

A. Some materials, yes.

Q. Now tell us, if you will, the negotiations

(Testimony of W. M. Gillis.)

which took place between you and the defendants prior to the time of the commencement of this work.

A. On or about August 8th, I was working on the Masonic Temple over there and Mrs. Gillette came over to see me there and talked to me about this job. I told her at the time that we did not have time to do it. She was quite insistent about it, and said they had to get off of the beach and one thing and another, and I explained to her that we had contract work that we had to do and that we couldn't do it—that we simply had too much on the schedule, and that with the labor conditions as they were at the time, it was almost impossible to get men and that we did not have enough men. Later she talked to me about it and I told her if we did it at all, it would have to be done between [2] other jobs, but that I would try to get the house off of the beach before the fall storm; but outside of that—well, we could not drop other work and go ahead with that.

Q. You were under contract, were you, at that time, for other jobs? A. I was.

Q. Well, go ahead, Mr. Gillis, and tell us about any other negotiations prior to that time.

A. They wanted to know approximately what it would cost. I could not furnish them the exact cost. I gave them an approximate cost on it which at that time, they thought was too much. They did say they would have the forms in ready for me to pour when we were ready. I told them if it could be worked out so it was ready, I could work the same crew.

(Testimony of W. M. Gillis.)

She said they would have the forms ready. Well, we waited quite awhile, but the forms were not ready and finally I went to Mr. Gillette and asked him what the score was going to be on it and he advised us to go ahead and put in the forms and go ahead with the job, which we did.

Q. Did that necessitate taking out other forms?

A. Yes, we had to take those forms out and re-build.

Q. Prior to that time, were you given the order to go ahead on the work? A. Yes.

Q. By whom? A. By Mrs. Gillette.

Q. When did you commence the work?

A. Approximately Sept. 10. [3]

Q. About when services—at the time of the original negotiations, was there anything said about materials for doing the job?

A. Yes, that was one of the items. I told Mrs. Gillette we could not furnish the materials—they were very scarce in town. However, she told me that practically all the materials were on the job and they would furnish them if we would go ahead with the work.

Q. You have alleged indebtedness of the defendants for certain materials. What, in a general way, are you claiming for materials?

A. There were certain materials we were able to furnish.

Q. Now, Mr. Gillis, those were materials which had not been available on the job? A. Yes.

(Testimony of W. M. Gillis.)

Q. And you were authorized to furnish these, were you, Mr. Gillis? A. That is right.

Q. When, approximately, did your services end, Mr. Gillis? A. On December 16th.

Q. Had the work been finished at that time?

A. No.

Q. Then why did the work end, Mr. Gillis?

A. Because Mrs. Gillette told us to stop the work and let it go.

Q. Will you tell us about that in detail, Mr. Gillis, please?

A. I had been around to the job that morning and I asked several times for materials, which they could not furnish, [4] and he said he did not know; and then about in front of the North Pole Bakery, I saw Mrs. Gillette. I had Mr. Newton with me that morning and I asked her if she had been able to secure the materials yet and she said, "No, I haven't and just let the whole thing go."

Q. And you considered that a command to quit work, did you? A. I certainly did.

Q. What did you do then, Mr. Gillis?

A. I went down and packed up the tools and took the men off of the job.

Q. You allege in your detailed items of account, filed in this action, Mr. Gillis, that 987 hours of labor were furnished the defendants; is that correct?

A. Yes.

Q. How were these hours kept?

A. By daily time sheets.

(Testimony of W. M. Gillis.)

Q. Who kept those, Mr. Gillis?

A. I did, in the main.

Q. And outside of yourself, who kept them?

A. There was one other man that kept time about three or four days, but mainly I kept them every day myself.

Q. And on a daily record sheet, Mr. Gillis?

A. That is right.

Q. And then what method did you use after that to keep a record?

A. After that, the time slips were turned in every week.

Q. Who kept the books?

A. George Newton.

Q. Have you the original time slips in your possession, Mr. Gillis? [5] A. I have.

Q. Now, Mr. Gillis, are these the original daily time slips kept by you for the work done on the Gillette property?

A. That is right, with exception of three or four that are in there.

Q. Which are those?

A. There are three of them right here.

Q. Give the dates, please, Mr. Gillis.

A. October 30, November 1 and November 7.

Mr. Cochran: Just a moment—if he is testifying from those there, they should be exhibited and marked exhibits.

Mr. Tanner: We are having him identify them.

Mr. Cochran: Well, I have a right to look at them—

(Testimony of W. M. Gillis.)

Mr. Tanner: Certainly. We are going to give you the right.

Mr. Tanner (After Mr. Cochran looked slips over): Any objection to having them introduced as evidence?

Mr. Cochran: No.

Court: These are simply the record of the hours?

Mr. Tanner: That is right, Your Honor. The daily record of the hours.

The Court: They may be received as evidence and marked "Exhibit A."

Mr. Tanner: Is Your Honor using the detailed statement of account in the file? I would like to have it if you are not.

Mr. Cochran: Is that the detailed statement?

Mr. Tanner: Yes. Mr. Gillis, I hand you this detailed statement of account which has been filed in this cause. Look over those various items of labor as set down, will you please? A. Yes.

Mr. Tanner: Were the labor hours that you have testified to actually put in on the dates that you have outlined in your item of account?

A. That is right.

Q. Now, take up, if you will, Mr. Gillis, the various items in detail; for instance, under "A" Item of Labor in your statement of account and tell us in detail what it was and the work done.

A. In item one, we had to take out the forms that were in the basement hole and clean them,

pulling the nails out and getting them out of the way.

Q. By the way, did you prepare the basement?

A. No, we put the basement on a new location for the grade that they told me they wanted on the house, which was established by two surveyors. It was necessary to raise the elevation of the present hole of the basement.

Q. Which had been performed by the defendants before you went on the job?

A. That is right, approximately one foot. They specified the point they wanted the grade taken from and the approximate point they wanted their wall.

Q. Were those after you had gotten on the job, Mr. Gillis?

A. That is right. To raise that to that point, there had to be a back fill put in. I asked them if they wanted me to do that or if they wanted to have it done, and I contacted someone to have it done.

Q. Whom did you contact? A. Ben Young.

Q. You say you had surveyors make that for you?

A. That is right, Mr. Long and Mr. Love. [7]

Q. Did you make a charge for that?

A. No.

Q. Why not, Mr. Gillis?

A. They did not make a charge to me.

Q. And so you made none to the defendants?

A. That's right. In item three we installed the forms, put in a reenforcement and poured the con-

(Testimony of W. M. Gillis.)

crete wall to the point and grade they asked for there. The reenforcing iron was hauled from the company and we put in that and put in the openings in the basement. There was no specification on the wall at any time or footings underneath the wall, and according to good standard practice, we poured that.

Q. And what was that?

A. Approximately nine inches.

Q. And what was the basement?

A. Approximately seven inches deep and seventeen inches wide, or approximately four inches wider than each side of the wall.

Q. Is that standard?

A. Yes, that is standard footing. After the basement was poured, the forms were torn down and the nails pulled out, and piled in the back of the lot. In Item No. 6, we raised the house from the location it was on, put it on the skids and prepared to move it onto the new location. No. 7, we moved the house from the old location to the middle of the street. We had to leave it there for awhile because there had to be light lines and telephone poles moved. That was just prior to the storm period and it was very hard to get the light company to move the lines. It was also hard to get hold of a cat to come in; in fact, we could not get one there. We finally did get them and the house was moved to the new location. [8]

After the house was moved to the new location, it

(Testimony of W. M. Gillis.)

was raised up approximately 3½ feet and then moved to the new basement; we framed it onto the house as near as we could tell what they wanted—there were no specifications, and we furnished materials, celotex, etc., for the new addition.

Q. Do I understand, Mr. Gillis, that from time to time you were directed as to what the defendants wanted when on the job?

A. That is right. No. 10, we applied the shingles to the new addition to the house. Item No. 11, we did some remodeling in the kitchen and of the stairway—it was moved to another location; in fact, a couple of times, as I remember. No. 12, placing fill-in around the basement. They directed me to have it filled in around the basement, which I did. Mr. Young and Eric filled in around the basement.

Q. Just a minute now, Mr. Gillis. Now, while we are on the labor issue, Mr. Gillis, you have alleged in your complaint and your detailed statement of account a charge for labor, as I understand your testimony, and your detailed statement of account, of 987 hours—is that correct? That you have sued for? A. That is right.

Q. And the charge of \$2220.75?

A. That is correct.

Q. Now, will you state to us how you have arrived at that charge?

A. The 987 hours? Well we charge at the rate of \$2.25 per hour for that number of hours which gives us the \$2220.75. [9]

(Testimony of W. M. Gillis.)

Q. Now, how did you arrive—\$2.25 is your regular charge, Mr. Gillis? A. That is right.

Q. And how long have you had that in practice?

A. Ever since we have been working here.

Q. And that is how long?

A. Well, I have done business here myself two years.

Q. And that has been in practice all that time?

A. Yes.

Q. You maintain a job sheet in connection with your work? A. Yes, sir.

Q. And will you tell us how you have arrived at the \$2.25 an hour for labor?

A. Well, we use \$2.25 an hour as a base labor cost.

Q. Let me ask you this, Mr. Gillis—during your work as a contractor here in Nome, have you found it necessary to pay time and a half for overtime for the men you hire? A. That is right.

Q. Has that been found necessary in order to secure labor?

A. Well, yes. That doesn't even secure labor half of the time.

Q. But you have found it necessary to do that?

A. Yes, that is right.

Q. And you have paid that?

A. That is right. Our \$2.25 over-all is based on 40 hours straight, 30 hours overtime on an over-all picture and on the hourly wages of the men

(Testimony of W. M. Gillis.)
that are paid. We found out when we first started—

Mr. Cochran: Now, I object to this. I don't care what his [10] custom is. The question we are interested in is how much labor did he put in on this particular job. Now, if he put them on other jobs and then worked them overtime on this one, that would make a difference—

The Court: There is no question about that so far. The question may be answered.

A. We found we could not work them overtime for one party. However, that was paid to the men; so the only thing we could do was establish a base wage rate to carry right straight through on every job all the way. That is why we established a base wage rate. During the working season of the year, we generally work ten hours a day, seven days a week.

Q. Does that over-all charge of \$2.25 cover your overhead as a contractor and builder? Is your overhead taken into account?

A. We try to make it cover our overhead. The only thing is not to furnish too many high priced men in one place.

Q. But in this case—this action, you are only suing for \$2.25—you are not claiming anything for overhead, is that right? A. That is right.

Q. And that has been your established rate since you have been operating in the last two years—is that right? A. Yes, that is right.

(Testimony of W. M. Gillis.)

The Court: Does this include your own time?

A. Yes, sir. [11]

The Court: At the same rate?

A. Yes, sir.

Mr. Tanner: You have had to employ men at a higher rate than that?

A. Yes, we do, even now.

Q. And some at a lower rate? A. Yes.

Q. And this is what you have found was the practical way to handle the situation?

A. That is the only way.

Q. So that, with you as manager of your business, Mr. Gillis, you get nothing for managing the business, but you get paid at the rate per hour, if you actually work, on the job yourself—is that correct? A. That is correct, yes.

Q. Have you paid the entire labor bill that you are suing for here, Mr. Gillis? A. I have.

Q. All of the men have been paid?

A. That is right.

Q. Now, referring to your detailed statement of your account, you show materials furnished and other items of expense. Will you take up the first item, for instance, which alleges six pieces of certain size celotex at \$4.00 a sheet; tell us about that.

A. That is material we lined the new addition with. I was able to get black celotex and I asked Mrs. Gillette if she wanted that and she said, yes, to go ahead and get it.

Q. From whom was that obtained?

(Testimony of W. M. Gillis.)

A. From the Glenn Carrington Company.

Mr. Tanner: Your Honor, we surrender for an exhibit here a receipted bill.

The Court: Well, I will preserve this until they are all entered and looked over by the other side.

Mr. Tanner: That will be perfectly agreeable with us, too, Your Honor. Now, let us take up the next item of three windows, etc., at a charge of \$52.30; those were made by you in the shop, were they? A. Yes.

Mr. Cochran: That bill is correct and we know the bill for the celotex is correct.

Mr. Tanner: All right. Now, take the roof valley tin and bracket at \$3.50—

A. The tin was furnished by Mr. Gross. However, this should be roof valley which was furnished where the new addition meets the new roof. It was bought from Galvin. The actual charge was \$3.85 on the bill. The tin should not be there.

Q. And the charge was actually more than \$3.50? A. It was actually \$3.85.

Q. Have you the bill for that? A. I have.

Q. Now, speaking of valley tin, in your account you say you have a bill for the valley tin—

A. I have one from the Pioneer Sheet & Metal. However, it was never charged for.

Q. How much was that amount? A. \$6.00.

Q. You have not charged it on this account; is that correct?

A. No, that was a mistake on my part—I did not get it in.

(Testimony of W. M. Gillis.)

Q. Now, taking the next item, you have concrete flue blocks, Mr. Gillis—— [13]

A. There were seven that we got from Galvin, furnished for the flue.

Q. Did you install them? A. I did.

Q. Have you a receipted bill for those flue blocks? A. I have.

Q. This bill includes other items, does it, Mr. Gillis?

A. Yes, we get our bills at the end of the month and there may be several things we have bought during the month for other jobs.

Q. You have alleged a charge of \$20.65—is that right, for the blocks? A. That is right.

Q. And that is the retail price in Nome?

A. That is correct.

The Court: These other items for \$30.00 and \$13.00 are not?

Mr. Tanner: It is just for the blocks. We will call it to your attention later on, Your Honor. Now, going to the next item, one keg of 16-d common nails, Mr. Gillis——

A. That's right. They were used on this job.

Q. Who furnished those? A. We did.

Q. From your own stock?

A. Yes, that is right.

Q. And you have charged \$12.00 for that keg of nails, Mr. Gillis; was that the retail price at that time for nails? A. It was, yes.

Q. Now, one keg of 8-d common; did you furnish that yourself? A. Yes.

(Testimony of W. M. Gillis.)

Q. And one keg of 6-d common, at \$12.00; did you furnish that from your own stock?

A. I did. [14]

Q. And was the retail price \$12.00 at that time?

A. It was.

Q. Now, form wire is the next item, Mr. Gillis; what about that?

A. That is wire we used in the forms. We bought 30 lbs. of wire from the Nome Motors. We furnished approximately 10 lbs. from our own stock, at 25c a pound, according to the bill from Nome Motors, and I charged that out of our stock at the same price per pound.

Q. Have you a bill from Mr. Harper?

A. I have a check here to cover the bill. That is the statement and here is the check to cover the statement.

Q. There are other things included in that check? A. Yes, there are.

Mr. Cochran: That is rather confusing—all the items included in the check—

Mr. Tanner: This represents the payment of these two statements? A. That is right.

Q. Which includes the payment of two statements, does it, Mr. Gillis?

A. Yes, that is right.

Q. And the form wire is included—is that right? A. Yes.

Q. Now, referring to the next item, eight pieces of 2x12x16 lumber. Will you tell us about that please, Mr. Gillis?

(Testimony of W. M. Gillis.)

A. Well, they were purchased from Lomen's and they were used in the beams underneath the house, and I think two of them were used at the time the house was moved.

Q. Have you a receipted bill for that purchase?

A. I have.

Q. Now, Mr. Gillis, you have made a charge against the defendants of \$31.01. Is that what you paid, Mr. Gillis? [15] A. Yes, it is

Q. The next item, Mr. Gillis, is one bunch wood shingles—what about those?

A. Those were furnished by us from the shop.

Q. Was \$3.50 the retail price in Nome at that time?

A. That is what Lomen Commercial Company told me. I did not know the price.

Q. The next item is No. 1 fir finish, Mr. Gillis—

A. They were furnished from the shop.

Q. Was the \$3.00 charge the local retail price for such items? A. That is right.

Q. The next item was siding strips at \$3.50?

A. That is correct.

Q. The next item is 2 lbs. siding nails at 40c.

A. Those were galvanized siding nails used on the asbestos shingles and were furnished by our shop.

Q. And that was the retail price?

A. Yes, that is right.

Q. The next item is three rolls of 15# felt at \$11.35, is that right? A. That is right.

(Testimony of W. M. Gillis.)

Q. You purchased that?

A. We purchased that from the Nome Hardware.

Q. Have you a receipted bill for that, Mr. Gillis?

A. Yes, I have. It is on two separate bills here.

Q. This bill includes other items not necessary on this job, is that right?

A. Yes, that is right.

Q. Did these three rolls of felt you speak of go into the Gillette work? A. Yes, they did.

Mr. Tanner: If your Honor will notice, apparently those are two different purchases—two rolls at one time and one at another.

The Court: Yes.

Q. The next item is 20 lbs. of shingle nails at \$2.40.

A. Those were purchased from the Nome Hardware and the actual charge was \$2.50.

Q. Have you a receipted bill for that?

A. Yes.

Q. Did those nails actually go into the construction for the work done for the defendants?

A. That is right, they did.

Q. Now, the next item is sand and gravel for backfill and concrete, in the amount of \$261.00, Mr. Gillis.

A. That was purchased from the Arctic Oil Delivery.

Q. Have you a receipted bill for those items?

(Testimony of W. M. Gillis.)

A. Yes, I have.

Q. Was that sand and gravel which actually went into the defendants' work?

A. That is right. There are some other items on there, but I think they are marked.

Q. And you are asking the defendants for the same amount that was charged you for that and that you have paid? A. Yes, that is correct.

Mr. Tanner: Here are the receipts from the Arctic Oil Delivery which Mr. Cochran has had in his possession, Your Honor.

The Court: This does not cover any other items? I think there are other items on there.

Mr. Tanner: The total amount is \$261.00, Your Honor. There [17] are two bills there I think that cover.

The Court: Well, this shows \$343.00.

Mr. Tanner: The segregation is made on the bill, isn't it, Your Honor? I did not glance at it just now—

The Court: Well, that would make it \$108.00 plus \$153.00—

Mr. Tanner: Yes. The total is \$261.00, as it appears, Your Honor. The sand and gravel you have testified to actually went into the defendants' job, is that correct, Mr. Gillis?

A. Yes, that is right.

Q. Now, the next item is rent on cat and concrete mixer, \$64.00 for the two, Mr. Gillis—

A. Yes, there were two bills.

(Testimony of W. M. Gillis.)

Q. Relative to the cat now, what were you charged for that? A. \$54.00.

Q. And the concrete mixer? A. \$10.00.

Q. Have you received bills for the payment of those items?

A. I have receipts for the payment of rent on the cat, plus other items. This covers various items from the same bill, and that bill is from Earl Coulthard. We rented the cat belonging to George Hite, but we rented it from Earl Coulthard.

Q. And that covers various items, including the rental of this cat? A. Yes, that is right.

Q. Now, relative to the Gillette job and the charge of \$54.00 for the rental of the cat, is that a charge against the cat for just—only for the Gillette job, of \$54.00? A. That is right. [18]

Q. And the rental on the mixer for \$10.00, was that actually for that job? A. That is right.

Q. Have you a receipt for that?

A. I don't have a receipt for the mixer; I could obtain that. The mixer was rented from him—from Larry Galvin.

Q. And you have actually paid that?

A. That is right.

The Court: The total of those two items is \$64.00?

Mr. Tanner: Yes, Your Honor, \$64.00.

Q. Now, you have a charge of \$1.47 for the territorial service tax; is that right, Mr. Gillis?

A. That is right.

Q. Now, I will ask you, under "B," Materials Furnished and Other Items of Expense, were all

(Testimony of W. M. Gillis.)

of the materials listed under "B" of your Items of Expense and for which you have charged defendants, were they all used in connection with defendants' work?

A. *That* is right, they were.

Q. And the service or rental you have charged for was for the machinery used in connection with defendants' work? A. That is right.

Q. Covering your entire section under "B"; is that correct, Mr. Gillis? A. *That* is right.

Q. And you filed a lien in connection with this work, did you? A. Yes, I did.

Q. Where?

A. At the Recording Office here.

Q. Have you the original lien filed, Mr. Gillis?

A. I have.

Q. Was the date you filed it indicated by the Commissioner then?

A. Yes, that is right—March 14th. [19]

Mr. Tanner: We offer this in evidence, Your Honor.

The Court: It may be admitted and marked plaintiff's Exhibit "B." Mr. Tanner, are you through introducing items of account and receipts?

Mr. Tanner: I think so, Your Honor.

The Court: Have you any objection, Mr. Cochran, to those which are being introduced?

Mr. Cochran: I do object to some of the items, Your Honor, but not to the receipts.

The Court: You may take that matter up in your

(Testimony of W. M. Gillis.)

cross-examination. They may be admitted altogether as plaintiff's Exhibit "C."

Mr. Tanner: Do you know whether or not the defendants have been billed on these accounts, of your own knowledge, Mr. Gillis?

A. They have, yes.

Q. Covering the entire amount sued for?

A. That is right.

Q. Mr. Gillis, you have—have you checked up the total number of hours under your labor exhibit as to what it totals?

A. The total number of hours on those tickets I turned in total 1000 hours.

Q. Well, by your action here, you have sued for only 987 hours—

A. Well, there is a discrepancy of 13 hours, insofar as 13 hours had been billed for the window sash and frame, and that was deducted from the 1000 hours, leaving 987.

Q. Who prepared the window frames, etc., Mr. Gillis? A. Mr.

Q. And he was taken off the job?

A. That is right. [20]

Q. So that in reality his 13 hours was charged against shop work? A. That is right.

Q. And so it was taken off of the daily time slip? A. Yes, that is right.

Q. Now, I note, Mr. Gillis, on the detailed statement of account, that you have labor from September 10th, inclusive, to December 16th, exclusive; is that correct, exclusive on the 16th?

(Testimony of W. M. Gillis.)

A. It should be December 16th, inclusive.
Q. There was an error made to that extent?

A. That is right.

Q. Now, I believe, in referring to your daily tabs of labor, the first one is on or about the 24th day of September; may I see the exhibit please? Yes; the first one on your list says the 24th of September. Now, you have stated that the work commenced on or about the 10th of September. Can you explain about this?

A. There was some work prior to that; in fact, prior to the 19th, there were thirty hours, but I guess that due to a misunderstanding of my information to the bookkeeper, he did not get that, but that wasn't sued for. There were approximately 19 hours in there.

Q. How many hours altogether?

A. Approximately 30 hours up to September 19th.

Q. Which actually went into the work?

A. That is right, yes. Between the 10th and the 24th, they were not turned in. Up until that time, the job had not officially started and [21] I kept that time in the book. I should have turned it over to the bookkeeper, but did not then, so consequently, the bookkeeper missed it entirely.

Q. So that you are not suing for that time between the 10th and the 24th? A. No.

Q. That is not included at all? A. No.

Mr. Tanner: You may cross-examine.

(Testimony of W. M. Gillis.)

Cross-Examination

By Mr. Cochran:

Q. On the 8th day of August, Mr. Gillis, Mrs. Gillette came to see you, I believe you stated?

A. As near as I remember, that is correct.

Q. On the 8th day of August; and she came to see you about moving the house they were living in. She wanted it moved across the street on the lot that they had purchased there; is that right?

A. That is right.

Q. Were you acquainted with Mr. Gillette?

A. No, I had heard the name, but did not know who he was.

Q. Did you know anything about Mr. Gillette's physical condition?

A. Someone told me he had hurt his leg.

Q. And was he on crutches?

A. I heard someone say something about it, but did not know anything about it.

Q. Now, when Mrs. Gillette came to see you, she came to see about getting the building moved from the south side to the north side of Front street; is that correct?

A. That is correct, yes, sir.

Q. And did she talk to you and anyone else, or just to you [22] alone?

A. As I remember, there was no one else there at the time.

Q. That was at your place of business?

A. No, it was at the Masonic Lodge.

(Testimony of W. M. Gillis.)

Q. Did you tell her that you would consider the matter or anything of that kind? Just what did you tell her?

A. As near as I can recall, I said we could not take on the work; that we had too much work and did not see how we possibly could do it, with the labor situation as it was.

Q. And you told her you could not do the job?

A. I told her I could not possibly do it at that time.

Q. Did you enter into writing at that time? The 8th of August?

A. The first time I talked to her about it, I entered into no writing. I don't know whether it was the 8th of August or not.

Q. Mr. Gillis, I will show you a photostatic copy. Is that one of your bill headings?

Mr. Tanner: If the Court please, let's have the original.

Mr. Cochran: If the Court please, I will in due time.

Mr. Tanner: Well, it seems to me there was some agreement entered—don't answer that question relative to the photostatic copy until the Court makes an order—

Mr. Cochran: I am going to use the original, Your Honor. Please examine the statement, and the writing, I am now handing you—and is that on your bill-heading? Is that your handwriting?

A. I imagine it is, yes. [23]

Q. Did you give this to Mrs. Gillette?

(Testimony of W. M. Gillis.)

A. I imagine I did—one or the other, either Mr. or Mrs. Gillette.

Q. Is that your handwriting?

A. I think it is.

Mr. Tanner: Check it over carefully and be sure, Mr. Gillis.

Mr. Cochran: Yes, I want that done too—

A. I would say that was my handwriting.

Q. Do you remember giving that to Mrs. Gillette? A. Yes, sir.

Q. On that date? I don't remember the date.

Q. That is the correct date as to when it was made out—is that correct?

A. I could not swear to that.

Mr. Cochran: Now, I would like to have this marked for identification. I will offer this in evidence, Your Honor.

The Court: You have had a chance to see it, have you, Mr. Tanner? Have you any objection?

Mr. Tanner: No, Your Honor.

The Court: Very well. It may be admitted as defendant's Exhibit No. 1.

Mr. Cochran: Now, that statement shows "pouring a basement"? A. That is right.

Q. And to move the house?

A. That is right.

Q. And to complete addition to the house, as shown by a map? A. Yes, sir.

Q. You had a plat at that time, did you?

A. No, sir.

(Testimony of W. M. Gillis.)

Q. What did you mean then, "Complete new addition as shown"?

A. Well, they said they had a sketch and they told me they wanted the corner of the house filled out. [24]

Q. Did you see the sketch?

A. I think at one time I did.

Q. Does this have reference to that sketch?

A. I could not say as to that.

Q. In this, it is provided you should do no work on the interior of the old house?

A. That is right.

Q. And you were to do no plumbing?

A. That is right.

Q. No wiring? A. That is right.

Q. No painting? A. That is right.

Q. And all materials to be furnished by the owners? A. That is right.

Q. And the moving was to be completed in October?

A. That is right, as near as I understood.

Q. And the price was to be \$2872.28?

A. That was approximately as near as I could figure it at that time.

On the 26th day of December, at 1:30 p.m., the following proceedings occurred:

The Court: You may proceed in this case, Mr. Cochran——

Mr. Cochran: Yes, I am ready, Your Honor. Now, Mr. Gillis, at the time that this paper was

(Testimony of W. M. Gillis.)

given to Mrs. Gillette, was there a sketch of the premises—that is, what was to be done?

A. I don't know. I don't remember seeing it if there was.

Q. Well, Mr. Gillis, refresh your memory if you will, please, and see if that was given to you at the time Mrs. Gillette talked the matter over with you. [25]

A. It was never given to me—anyway, I don't remember; it might have been given to me, but I don't remember it.

Mr. Cochran: I ask that it be entered for identification—

A. I don't remember it—

Q. Didn't you have the sketch at the time you figured on the price when you made this written statement?

A. I don't remember the sketch. I may have seen it at the time we were talking about it. It may be the one or a different one, so far as I know.

Mr. Cochran: Please mark it for identification (to clerk). Have you any sketch that you made at the time?

A. I have none.

Q. At the time Mrs. Gillette came to see you, when you were working on the Masonic Temple building, she explained to you what they desired to have done, didn't she?

A. Approximately, yes.

Q. And were you familiar with the building at the time she talked to you? A. I was not.

(Testimony of W. M. Gillis.)

Q. Did you familiarize yourself with the building subsequently? After that time?

A. Yes, sir. Yes, I took a look at it.

Q. The building extended back from Front street over the beach sand—is that correct?

A. Yes, sir.

Q. And had a bulkhead around it?

A. Not that I remember.

Q. There were some timbers, 10x10 or 12x12, were there not?

A. I could not swear as to that.

Q. Now, when did you begin the moving of this house? [26]

A. I could not give you the exact date on that.

Q. Well, can you refresh your memory and tell me when you began on it—from your time slips?

A. I don't know whether I could or not—that is, when we actually began to move the house. It was before the last bad storm last year, if that has any bearing on it.

Q. Well, was it September?

A. I believe it was October.

Q. Who did you have employed?

A. Earl Coulthard.

Q. Did you have anyone employed with the caterpillar? A. Yes.

Q. Just to move the building?

A. That is right.

Q. What did you have to do to the building first, to move it?

(Testimony of W. M. Gillis.)

A. We had to put skids under it.

Q. Did you have to pick it up?

A. We probably had to raise it a little on the sidewalk.

Q. Then you dragged it out into the street?

A. That is right.

Q. And left it there? A. For awhile, yes.

Q. Was it level? A. Fairly well so, yes.

Q. Now, this building had a concrete flue in it, didn't it?

A. That is right—a concrete block flue.

Q. Now, was that in good condition?

A. Not too good.

Q. What was the matter with it?

A. The mortar was loose.

Q. Did you take it down?

A. Not at that time, no.

Q. Did you brace it up so as to move it at that time—before you moved it? [27]

A. We cut it off in the basement.

Q. Did you put any braces in there to hold it?

A. Yes.

Q. And you cannot give me the date—can't you look at your time slips and tell me that?

A. No, I don't think so; they do not show what was done, exactly, on that date.

Q. Now, you undertook to move the house—that is correct? A. Yes, that is right.

Q. From its location on the south side of Front street to its location on the north side?

(Testimony of W. M. Gillis.)

A. That is right.

Q. And you understood specifically that you were not to do any work inside the old house—any carpenter work in the old house?

A. Yes.

Q. And it was specifically understood that you were to do no plumbing? A. That is right.

Q. And no wiring? A. That is right.

Q. And also specifically understood you were to do no painting? A. That is right.

Q. And also understood that all materials were to be furnished by the defendants?

A. That is right.

Q. You were definite in stating that situation?

A. Yes, because we could not furnish the materials.

Q. And that was one of the reasons you were definite about it? A. That is right.

Q. Then you said that the moving operations would be completed in October?

A. Approximately at that time; we thought then it could be done in October. [28]

Q. You did not make any specifications?

A. The specifications were made when I talked to them.

Q. And the price for which you were to do that and complete the work was \$2872.28?

A. That was approximately the labor cost for the job.

Q. Did you put it on this statement—that it

(Testimony of W. M. Gillis.)

was "approximately"? A. I did, I think.

Q. Give me the statement. Is that—did you put on the statement it was "approximate cost" or the "cost"? Were they told that that would be the approximate cost? A. Yes.

Q. Why didn't you put down it would be the "approximate cost" on that? Why didn't you write in that word?

A. Because I did not consider that a contract. It was an approximate estimate.

Q. Well, did you tell them it was an approximate estimate? A. That is right.

Q. But you did not put it down in writing. Now, give me those time slips, if you please. Now, Mr. Gillis, will those time slips refresh your memory as to the time when you moved the building?

A. No, I don't think it was listed here. The basement was poured before that time, and I don't think it is listed here as to when the actual date the building was moved.

Q. Well, all you had to do was put some skids under it, wasn't it? [29]

A. Well, there were things that had to be moved and it had to be raised on the front side.

Q. That wasn't over a day's work to get that building prepared to move, was it?

A. I don't remember.

Q. How long did you take in preparing this building to move?

A. I couldn't tell you that for sure.

(Testimony of W. M. Gillis.)

Q. Now, when you moved it, Mr. Gillis, you moved it out into the street; did you move it out into the middle of the street?

A. We moved it into the street.

Q. And how long did you leave it there in the street before you did anything more to it?

A. I could not say exactly.

Q. Why didn't you move the building across the street to the lot?

A. Because we were stopped on account of light poles.

Q. Did you find that out when you put it into the middle of the street?

A. No, we knew that, but that was during the storm, and the main idea was to move it across the street so it would not wash away, and we could not get the Northern Light & Power to move the lines when we wanted them to. The lines had to be loosened and the poles pulled back.

Q. Did you cut off the corner of this bulding?

A. The corner of the cornice.

Q. When did you cut that off?

A. When we got ready to move it on through.

Q. Did you move the light poles?

A. We moved the top of the poles, but not the bottom.

Q. Well, was there any reason why you could not take it around the Thornton building?

A. We couldn't get it through there. [30]

Q. Mr. Hite moved the O'Farrell building through there, didn't he?

(Testimony of W. M. Gillis.)

A. I don't know about that.

Q. Was it necessary to cut off this building on the cornice to get it between the Thornton Building and the light poles?

A. Yes, it was necessary.

Q. There was not enough space without cutting that corner off? A. That is right.

Q. Didn't the building clear the space between the Thornton Building and the light pole when you moved it? A. The building did, yes.

Q. But the cornice would not have cleared, or did not clear? Well, why didn't you have to cut it off the whole side of the building then?

A. It did not affect the rest of the building where it went through there. It had to be taken through at an angle, so that it required taking off only one corner of the cornice to get it through.

Q. But the building is square, isn't it?

A. No, sir, it is wider than it is long.

Q. But it is square on each side where you cut off the corner, isn't it? What I am trying to get at is why you had to cut off one corner of the cornice—why, if you had to cut that off, didn't you have to cut off the whole thing?

A. Because the building had a projection on one side. That is where the building—we squared the building up—

Q. Now, that cornice is in the same condition as it was then, isn't it? A. No, sir. [31]

Q. When did you fix it; why didn't you fix the balance of it?

(Testimony of W. M. Gillis.)

A. We were called off the job.

Q. On the 16th day of December; is that correct?

A. Yes.

Q. You were called off the job. Was there snow on the ground the 16th of December?

A. I don't know; I suppose there was.

Q. That was after the freeze-up, wasn't it?

A. Yes.

Q. Did you make the excavation for the basement of this building? A. No, sir.

Q. Who did?

A. I could not say as to that.

Q. Did you put in the forms for the concrete basement? A. Yes.

Q. You did? A. Yes, sir.

Q. Well, you say the forms were not put in right; did Mr. Harper put any forms in there?

A. He tried to, I guess.

Q. Did he consult you, Mr. Gillis?

A. He came and wanted to know why we didn't put in the forms.

Q. That was part of your agreement, was it?

A. No, sir, the forms were to be in when we were ready to pour it.

Q. And when you went there, they were ready, weren't they?

A. No, sir, the forms were not. There was part of an outside form, but no places—no wires.

Q. Did you have to tear them out?

A. That is right.

Q. All of them? A. That is right.

(Testimony of W. M. Gillis.)

Q. Were they all put in wrong.

A. I would not say that they were all put in wrong, but he did not complete them.

Q. Did you give your personal attention to the matter of the forms?

A. When we put them in? [32]

Q. Yes, we will say when you put them in.

A. Yes.

Q. Did you look at the forms that Mr. Harper put in, what there was of them? A. Yes.

Q. Did Mr. Harper talk with you and consult with you about them?

A. I saw him a time or two in the restaurant, and he said he did not know anything about it, and why didn't I do it?

Q. Well, did you understand that you were to put in the forms?

A. Not at that time. The Gillettes had to have the forms in and they said Mr. Harper would do it.

Q. And did Mr. Harper consult you as to how the forms were to be put in?

A. No, I don't remember that he did. It is possible that he did, but I don't remember much about it.

Q. Now, you had been working there in September on the moving, hadn't you? A. Yes.

Q. And several days—and the latter part of September, you had several of them done?

A. Yes, sir.

Q. And so you began the work then sometime in September?

(Testimony of W. M. Gillis.)

A. I could not say as to that. We were working on the basement, but when the building was moved on, I could not say.

Q. What were you doing?

A. We were pouring the basement.

Q. In September?

A. The latter part of September, I am pretty sure.

Q. Isn't it a fact, Mr. Gillis, that at that time you had moved the building into the middle of the street?

A. I don't think so. I think the building was moved in October. [33]

Q. Now, you started to move the building on the 14th of October, didn't you?

A. I could not say as to that.

Q. Haven't you any books or records that will show that? A. Actually the moving?

Q. Yes. A. I think not.

Q. How long were you in moving the building over to its foundation after you commenced moving it?

A. I could not say as to that exactly.

Q. Now, did you pour the cement basement?

A. That is right.

Q. And you poured the floor in the basement, did you? A. We did not.

Q. Why didn't you do that?

A. Because we were told the ground was frozen and we could not pour it.

(Testimony of W. M. Gillis.)

Q. Well, you agreed to pour a full basement, didn't you? A. I did.

Q. But didn't pour the floor; and you would call the walls a complete basement?

A. That is under the complete house if classified as the basement.

Q. Well, you never poured the basement then?

A. No, sir.

Q. Did you intend to do it when you gave Mrs. Gillette this writing? A. No.

Q. Why didn't you?

A. Because she said it was frozen and would have to go till next year.

Q. Why?

A. We could not very well start to pour until the house was moved over. I don't know whether we started to move it before the pouring was done or not. We could not [34] pour the basement and the floor at the same time. If we had poured the floor, it would have been unprotected and any storm or any freeze would have hurt the floor.

Q. Well, you could have poured the floor later, couldn't you? A. That was our intention.

Q. It was your intention to pour afterwards?

A. Yes.

Q. Now, you say there was a fill-in in the basement? A. Yes, in the excavation—

Q. And did you—before you fixed up the forms, did you fill in before that?

A. I think the other forms were taken out and the boys were working on it.

(Testimony of W. M. Gillis.)

Q. And you had to get your foundation for the sides before you could pour your cement, didn't you?

A. Would you clarify what you mean by "foundation" for me, please?

Q. Well, you have to have a foundation to pour your cement on, don't you? You don't pour it on loose gravel, do you? A. Yes.

Q. On loose gravel?

A. It was levelled with the cat in there.

Q. The bottom of the form for the walls?

A. The forms were not in there at that time—I don't believe I understand—

Q. Well, what I am trying to get at is that you poured the walls of the basement, and before you poured those, you filled in what you call "backfill" in the basement; is that right?

A. Yes, that is right.

Q. And you raised it up how far?

A. I would say somewhere about eight inches.

Q. And you put that down there and scattered it, and did you dump with the cat down there, and level the floor?

A. That is right, the gravel was dumped with the truck—

The Court: Who did that?

A. Ben Young.

Mr. Cochran: How did he get the cat into the pit?

A. I did not have anything to do with that. I merely was having it done for them.

(Testimony of W. M. Gillis.)

Q. Then you did not have anything to do with preparing the base for the side-walls?

A. We put our footing under the side-walls, if that is what you mean.

Q. How do you account for that—was that a proper basement?

A. That was standard of footing, yes.

Q. Well, standard form for a basement is to put it down and tamp it down before you pour the concrete, isn't it? A. It did not do much good.

Q. How do you account for the walls cracking?

A. I don't know.

Q. Did you know that the walls cracked? What would cause that?

A. That could be caused by a lot of things.

Q. Well, do you know what would account for it?

A. No, sir.

Q. Have you examined them? A. No, sir.

Q. Did you examine those walls prior to the 16th day of December? A. Yes, sir.

Q. And were they cracked?

A. Not that I saw at that time.

Q. Now, is it standard form where the walls crack?

A. If you want to guard against and protect your walls, you waterproof the outside of them—

Q. Well, did you do that, Mr. Gillis?

A. No.

Q. Why didn't you?

A. I had nothing to do it with.

(Testimony of W. M. Gillis.)

Q. And Gillettes did not have anything to do it with? A. Not that I knew of.

Q. You never heard of it?

A. Heard of water-proofing?

Q. Heard that they had about 50 gallons?

A. They could have had—I don't know—

Q. And isn't it a fact that they asked you to put that on the sides of the walls?

A. Not that I know of.

Q. Did you pour that concrete before freezing weather?

A. I think so; the concrete did not freeze, at least.

Q. Freezing weather setting in was the reason why you did not pour the floor in the concrete basement, was it?

A. You mean before we moved the house?

Q. Well, did freezing weather set in before you moved the house?

A. I don't remember for sure.

Q. Now, you knew it was necessary, didn't you, Mr. Gillis, on the 8th day of August, when you gave this writing to Mrs. Gillette, you knew then that, to protect the concrete basement, the building must be moved before freezing weather, didn't you?

A. No, sir, that had nothing to do with protecting the basement.

Q. You had something to do with the moving of the house, didn't you?

(Testimony of W. M. Gillis.)

A. I had nothing to do with the pouring of the basement.

Q. And in order to enable you to pour the basement, it was [37] necessary for you to do that before freezing weather, wasn't it?

A. At the time the basement was poured, it did not freeze. It was in good shape.

Q. Didn't you say in your direct examination you commenced your work on September 10th?

A. I think right in there, yes.

Q. Then tell us what you did on the 10th of September.

A. I think we put up corner boards—I cannot say exactly.

Q. You said in your direct examination that you commenced work on the 10th of September; then tell us what you did.

A. Well, I don't remember exactly, but we put up the corner boards first, and the forms were taken out and cleaned and then we started the building of the forms we were to use in there—

Q. Then you remember now that you did commence work on the 10th of September.

A. We commenced work on the basement at that time. That is what our daily time sheets show.

Q. Did you pour the concrete then?

A. After we had the forms in—

Q. You did not put in the forms, the forms were there, and you tore them down, didn't you?

A. We had to put in another set of forms.

(Testimony of W. M. Gillis.)

Q. Well, then you commenced the 10th of September, didn't you, Mr. Gillis?

A. That is when we first worked. Our time sheets shows that.

Q. When did you move the house onto the foundation? [38]

Mr. Tanner: Well, if the Court please, the witness has testified several times that he could not say the exact date he moved the house—

Mr. Cochran: Well, was it in September?

A. I think it was October.

Q. Well, was it the early part of November, or was it in October?

A. I think it was October.

Q. Now, in this writing that you gave here, which I have called a contract—

The Court: Call it what it is marked—

Mr. Cochran: Well, I maintain it is a contract.

The Court: Is it marked as an exhibit?

Mr. Cochran: Yes, Your Honor.

The Court: Then, let's get it in as an exhibit and not as a contract. It is only for identification, I take it—

Mr. Cochran: Yes, Your Honor. Now, Mr. Gillis, how long were you, from the time you commenced the moving of this house, until you got it onto the foundation?

A. I could not say exactly; I don't have it marked down.

Q. Did you get it onto the foundation before fall set in? A. No, sir.

(Testimony of W. M. Gillis.)

Q. There were 987 hours charged to the moving of this building; is that correct?

A. Yes, that is right.

Q. Did the men that were employed there work on this building and the moving of it all the time?

A. You mean only that building? No, sir. [39]

Q. Did you pull men off of that job at various times and send them other places?

A. That is right, yes.

Q. And how did you segregate their time then?

A. The time was kept each day.

Q. For the time they were employed on this job?

A. Yes.

Q. How long were you pouring this concrete?

A. A little over ten hours.

Q. How many men employed on the pouring of the concrete?

A. I could not say exactly; there were quite a few.

Q. How many men should have been pouring?

A. Well, it takes quite a few; it depends on the size of the mixer.

Q. Well, I am asking you how many you had to do it there?

A. It takes quite a crew; I imagine there were 12 to 14 men.

Q. To pour concrete walls?

A. I imagine.

Q. What would they be doing?

A. The general work that is to be done around a mixer when they are pouring.

(Testimony of W. M. Gillis.)

Q. It takes one man to run the mixer, doesn't it?

A. That is right.

Q. And the rest of it is in pouring the mixture down the forms?

A. No, the mixer has to be loaded—

Q. It is automatically loaded, isn't it?

A. No, sir, it has to be shoveled.

Q. You had one man shoveling?

A. No, several, and filling up the wheelbarrow.

Q. And you mean to tell me that it took 12 men?

A. There were approximately 12 men—somewhere in that vicinity. [40]

Q. What was the size of this basement?

A. I don't remember the size; it should be given on there.

Q. The size of that building is 24x30, is that right? A. I imagine it is.

Q. And the basement would be the same size?

A. I think so, yes.

Q. So that ten hours was ample time to pour the concrete basement that you poured, wasn't it?

A. I think it took us a little over ten hours.

Q. You don't know definitely the number of men you had employed then?

A. I could not say offhand, no.

Q. Now, Mr. Harper I understood you to say, had sunk this basement too deep, is that right?

A. I don't know who had done it.

Q. Well, it was too deep, was it, Mr. Gillis?

A. It was deeper than the height of wall they

(Testimony of W. M. Gillis.)

asked for and the point of grade they asked to start from.

Q. What do you mean? Do you mean the depth?

A. The grade, the point at the top of the basement; that is what I had Mr. Long and Mr. Love do, to give me a grade from that point.

The Court: It would be a level spot from which to build, is that right? It would be a line from which to figure or go from?

A. Yes.

Mr. Cochran: You mean a certain spot on the lot?

A. No, I mean a certain point—a certain elevation. [41]

Q. And who did you say gave you that?

A. Mr. Love and Mr. Long.

Q. And how did they establish that?

A. With their instruments.

Q. My goodness alive, how deep was the basement to be?

A. Below grade, or below the top of the basement.

Q. Well, how deep?

A. Approximately seven feet, I don't remember for sure.

Q. Is that what you mean by grade—the depth of the basement?

A. No, a grade line is a level line where the point of the building will come, so we have something to go by.

(Testimony of W. M. Gillis.)

Q. And Mr. Long and Mr. Love established the point of the height of the basement?

A. That is right.

Q. And how did they establish that, arbitrarily?

A. They established it with their instruments.

Q. Now, you say, in defendants' exhibit No. 1 that you are to complete new addition as shown. What do you mean there by "as shown"?

A. Well, according to the way they were to show me what they wanted there in their new addition. We talked about the corner of the house where there had been a porch on there, and they wanted that finished on out, to make a room on it.

Q. Wasn't that as shown on this plat?

A. It probably was, if that is a plat of it—I don't remember a plat.

Q. Did you complete that addition?

A. No, I did not. [42]

Q. What was the size of that?

A. I don't remember for sure; it was approximately 8x14, I believe.

Q. Well, the size was 7x17; is that correct?

A. It could be, I don't know. I don't remember offhand what the size of it was.

Q. Now, the complete new addition as shown that was to be built on the end of the building, wasn't it in one corner?

A. Across the end of the building—across one corner.

Q. Now, do you recall that that was what was shown on this plat?

(Testimony of W. M. Gillis.)

A. I don't remember the plat.

Q. Well, you did not build that, did you?

A. Sir?

Q. You did not put that across the back of the building, did you?

A. We put part of it on there, yes, sir.

Q. You put that on the east side?

A. I think it is on the north side.

Q. You built nothing on the west side at all?

A. Part of that addition was built on the west side; it is on the northwest corner.

Q. Now, then, what you built consisted of a wall and one side, did it, Mr. Gillis?

A. That is right.

Q. And that was 7x17?

A. It could have been.

Q. And did you finish that? A. No, sir.

Q. Well, why didn't you finish it?

A. Well, one reason, the material wasn't available and the other reason because Mrs. Gillette said to let the thing go.

Q. What material was not available, Mr. Gillis?

A. Well, asbestos shingles, etc.

Q. But you put asbestos shingles on that west side, didn't you?

A. If there were any left, the boys did not think they were good enough to use, and there were not enough to complete the job.

Q. Did you put anything under the shingles, any tar paper?

(Testimony of W. M. Gillis.)

A. Well, we put asbestos pads under that. I think there was tar paper if I remember right.

Q. And you don't know whether or not you tar-papered that?

A. I don't remember for sure.

Q. Now, you made a roof for it?

A. That is right.

Q. And that was 7x17?

A. The roof was bigger than that.

Q. Well, it has a pitch—it is about 18 inches by about—19x8—18x8?

A. Well, the roof would be longer than that because it extends onto the other roof.

Q. What is the maximum size of that roof you put on?

A. I could not say; we could figure it up.

Q. Now, all the work you did on that consisted of building one side, 17 feet long, and the end of it, 7 feet, and the roof; is that right?

A. No. We put in the windows and door frames, lined part of it, put in partitions, put in stairways—

Q. Well, that is the size of the wall you put in, 17x7, isn't it?

A. I imagine that is very close.

Q. Well, of course, we cannot tell much about your imagination, if you don't know— [44]

A. Well, I could not tell unless I went down there and measured it.

Q. What was the height of that wall; 17 feet?

A. Approximately, yes.

(Testimony of W. M. Gillis.)

Q. Do you mean it took 300 pounds of nails to build that? A. No, sir.

Q. You have them charged with 300 pounds of nails in one place and about 25 pounds of nails in another place—

A. It takes lots of nails for concrete forms and runways.

Q. What do you mean by "runway"?

A. To wheel the cement in to the forms, there has to be a runway clear around there.

Q. And you used 300 pounds of nails?

A. Yes, approximately.

Q. You said you had to strip the forms; now, did that take long?

A. It takes quite awhile.

Q. About how long?

A. That I could not say, offhand.

Q. Did you have to take all of the forms down that Mr. Harper put up?

A. We did take them all out, yes.

Q. And rebuild them? A. Yes.

Q. One objection was that they were not wired?

A. They were not ready, no.

Q. The forms were nailed?

A. Yes, the part that we did take down and Mr. Gillette had hired that done, apparently.

Q. You did not pay Mr. Harper for putting in those forms and pouring of the concrete, did you?

A. No, sir. [45]

Q. Now you—this work on the east side on the

(Testimony of W. M. Gillis.)

addition—on the north side of the present building, you stated you had not finished that?

A. No, sir.

Q. Did you find the sump down in the basement?

A. No, sir, when I first looked at the hole, there was a steel barrel partly sunk there.

Q. Did you fill that in? A. I did not.

Q. It was not filled in?

A. It might have been, but I did not fill it in because I did not fill in the basement.

Q. It was sunk for a sump?

A. I think so.

Q. Whether it is still there or not, you don't know?

A. I don't think it is; I could not swear to that.

Q. Now, on the north wall—that was just knocking out a portion of the wood there, wasn't it?

A. It was supposed to be a room.

Q. There was no porch there? But that is what it is— A. A room is built on there.

Q. And what did you do toward the side of that building—the north end of the building; did you put any tar paper on it?

A. I don't remember for sure.

Q. Did you finish it on the outside?

A. No, sir, we did not finish it on the outside.

Q. Did you finish the roof?

A. I think so, yes.

Q. What did you put on there?

A. Wooden shingles. [46]

Q. And that took one bundle of shingles?

(Testimony of W. M. Gillis.)

A. No, they furnished some shingles.

Q. Well, they had 6000 feet of lumber for you to use there, didn't they?

A. I don't know how much they had.

Q. There was lots of that there, wasn't there, and still lots of it there?

A. I could not say how much there was.

Q. Now, you braced the house up?

A. What do you—I did not take any braces out of the house.

Q. The house wasn't braced on the south side of the street?

Mr. Tanner: Pardon me, I don't believe the witness understood your first question.

Mr. Cochran: Did you put any braces back under the house to hold it up?

A. Under the beams, temporary ones.

Q. Didn't you put in any permanent ones?

A. There were supposed to be permanent ones put in there, yes.

Q. Did Mr. Gillette come to see you about putting them in?

A. Well, there were two 6x12 beams under the house and the 6x6 posts, or whatever timber was needed, but they were never put in because we never finished. We did not finish pouring the basement because Mrs. Gillette said it could not be poured that winter.

Q. Did you keep a fire under the building after it was moved over there?

A. Part of the time we kept our own fire, yes.

(Testimony of W. M. Gillis.)

Q. There was a furnace there, wasn't there? Did you keep a fire in it?

A. Duke Metrovich took care of the fire in the furnace part of the time. [47]

Q. Did you put in a stairway down in the basement? A. That is right.

Q. And did you—it was a sort of a temporary affair, wasn't it?

A. No, I think that was permanent, if I remember.

Q. And you recall that permanent stairway?

A. Well, it could not be set to permanent grade, because the floor wasn't there yet.

Q. Now, you have in your statement here three rolls 15# felt; where did you use that on this building?

A. We used it underneath the roof and underneath the valleys. And, oh, I don't remember for sure—it was possibly put under some of the shingles that were put back on.

Q. It did not take one-half roll to cover 7x17, did it?

A. It depends on how you lap it, and the conditions under which you use it.

Q. There were 300 lbs. in a roll?

A. Yes, I believe so.

Q. And it is three feet wide?

A. 34 or 36 inches, I believe.

Q. And you think you have—might have used some of it under the roof? A. I think so.

Q. And where else, Mr. Gillis?

(Testimony of W. M. Gillis.)

A. Probably some on the sides and some of it to cover up windows until we got the work done; it was used on the job anyway.

Q. It was used somewhere about the building—three rolls?

A. That is right. I don't remember whether there was any left there or not when we left.

Mr. Cochran: That's all. [48]

Redirect Examination

By Mr. Tanner:

Q. Just a moment, please. Mr. Gillis, speaking of the cornice that was cut off of the house you testified to, was that done with the knowledge and approval of the defendants?

A. That is right. She was told about it and consented that it be done—that's right.

Q. Now, relative to the taking out of the forms that were in there for the basement, was that taken up with the defendants prior to taking them down?

A. That is right, and it was explained to them why it was necessary. There were not enough forms in there that we could go ahead with. In fact, when we talked about the job originally, we said if they could have them in when we went down, when we got done at the Northern Commercial, so we could move the concrete mixer there, it would speed things up. Well, we waited quite awhile for them and they were not ready, and finally I went to

(Testimony of W. M. Gillis.)

see Mr. Gillette and asked him about it; and he asked me why didn't I go ahead and do the job.

Q. Why was that necessary?

A. Well, they were not the kind of forms we could use in there; in fact, if we were to have used the forms in there, it would have taken us longer than the time it did take us.

Q. Now, you mentioned Duke Metrovich relative—you stated that he kept the furnace going, did you? A. That is correct. [49]

Q. And you had nothing to do with that?

A. No, sir.

Q. And you had nothing to do with the plumbing? A. No, sir.

Q. Now, the cracking of concrete was mentioned. What might cause properly poured concrete to crack?

A. Well, there are any number of things that might cause it. If it is on frozen ground, it is liable to crack; any one of a number of things might cause it to crack. It is not always because it is on frozen ground. The bank's foundation is cracking and it is a much bigger and heavier foundation than this one.

Q. If the Court please, at this time I would like the privilege of asking the witness one more direct question. Mr. Gillis, you testified on direct examination that defendants have been billed in reference to this account? A. Yes, that is right.

Q. Have they ever contacted you in reference to the account? A. No, sir.

(Testimony of W. M. Gillis.)

Mr. Tanner: You may cross-examine.

Cross-Examination

By Mr. O. D. Cochran:

Q. You never went to see them about this account, did you?

A. They were billed for it.

Q. My question was that you did not go to see them— A. No, sir.

Q. At any time?

A. After we left the job?

Q. Please answer the question.

The Court: Answer the question. Did you ever go to see them [50] concerning this account?

A. Not after we left the job, no—not that I remember.

Mr. Tanner: That is all, Mr. Gillis.

Mr. Tanner: Call Mr. Newton.

GEORGE NEWTON

sworn.

Direct Examination

By Mr. Tanner:

Q. State your name, please.

A. George Newton.

Q. You live here in Nome, do you?

A. Yes, sir.

Q. Are you employed with Mr. Gillis?

A. Yes, sir.

(Testimony of George Newton.)

Q. Were you so employed last fall, September of last fall? A. Yes, sir.

Q. Do you handle the books of Mr. Gillis?

A. Yes, part of them.

Q. Do you send out the statements on the work that you have done—that Mr. Gillis does, and so on?

A. Yes, sir.

Q. Mr. Newton, did you at any time send to the defendants a detailed statement of account subsequent to the time that Mr. Gillis stopped work on the Gillette property?

A. I believe I sent one at the end of November—just on the doors and window frames, on the \$52.50 bill.

Q. Sometime in November of 1946?

A. Yes, I think so.

Q. And did you retain a carbon copy of that?

A. Yes, sir.

Q. Have you that copy? A. Yes, sir.

Q. May we see it please? (Mr. Newton presented copy.)

Q. Is this a carbon copy of the statement that you sent to the defendants?

A. That is a carbon copy of the statement I believe I sent at the end of November. [51]

Q. And you sent the original to the defendants?

A. Yes.

Q. This represents what?

A. The triple frames and the door.

Q. The work that was done in the shop that has been testified to? A. Yes.

(Testimony of George Newton.)

Mr. Cochran: What is the purpose of this?

Mr. Tanner: The purpose is that we want to show that the defendants have been apprised of this entire account.

Mr. Cochran: And so what?

Mr. Tanner: And so they have failed to pay, and you have denied that.

Mr. Cochran: Well, it is irrevelant and immaterial, but I have no objection.

The Court: It may be admitted and marked plaintiff's exhibit "D."

Mr. Tanner: All right. Now, Mr. Newton, did you at any time send to the defendants a statement of the rest of the Gillis account, other than the one just admitted in evidence?

A. Yes, that was included again.

Q. So that later you sent a complete statement?

A. Yes.

Q. Have you a copy with you?

A. I have a copy of the original bill.

Q. Is it a carbon copy? A. Yes, sir.

Q. And the original was sent to the defendants?

A. That is right.

Q. And it includes the \$52.30 you have shown?

A. No, this does not include that, no; it includes everything except that. [52]

Q. And this is an exact carbon copy of what you mailed the defendants? A. Yes, it is.

Mr. Tanner: We ask that this be marked for identification, Your Honor.

(Testimony of George Newton.)

The Court: It may be admitted and marked "Plaintiff's Exhibit E."

Mr. Tanner: Do you recall about the time Exhibit "E" was sent to the defendants?

A. I think it was the latter part of December, or January, in closing out the December books.

Mr. Tanner: I see. Now, Mr. Newton, were you employed and working with Mr. Gillis at the Masonic Hall at the time Mrs. Gillette came to interview Mr. Gillis relative to the work to be done?

A. Yes, sir.

Q. State, if you will, the conversation, if any, that you heard relative to this matter.

A. Well, as I remember, she came to the door of the Masonic Hall and asked to see the boss, and we called Mr. Gillis over and he talked to her, and I don't remember the exact words, but I know she asked him if—

Q. As near as you remember, state what took place, Mr. Newton.

A. Well, she asked him to do some work and he stated he was too busy.

Q. Mr. Newton, on or about the 16th day of December, 1946, were you present when a conversation took place between Mr. Gillis and Mrs. Gillette? A. Yes.

Q. Where was that?

A. That was in front of the North Pole Bakery.

Q. And state what that conversation was, as near as you recall.

(Testimony of George Newton.)

A. Well, they met at the doorway, and we had just come from the Gillette job, and he asked her if she could get some more material to finish and she said, "No, just let the whole thing go."

Q. And she said, "No, just let the whole thing go"?

The Court: What date was this?

Mr. Cochran: December 16th, he said—Mr. Gillis said.

Mr. Tanner: You may cross-examine.

Cross-Examination

By Mr. Cochran:

Q. Now, Mr. Newton, you were up in the Masonic Temple Building when Mrs. Gillette came to see Mr. Gillis about moving her house; is that right?

A. Yes.

Q. You were working there?

A. That is right.

Q. What were you doing?

A. Putting celotex on the ceiling.

Q. What part of the building were you employed in at the time Mrs. Gillette came up there?

A. It was in the part that is the main hall now.

Q. The main lodge room?

A. That is right.

Q. And you were up at the ceiling, nailing some celotex and Mrs. Gillette came in—when she came in? A. No, she did not come in.

Q. Where was she?

A. Standing outside the door.

(Testimony of George Newton.)

Q. That is quite some distance from the main hall, isn't it, Mr. Newton?

A. The doorway is right in front, and I [54] was right there—on some horses—

Q. And you stopped your work to hear what was said? A. No, I did not.

Q. What was Mr. Gillis doing at that time?

A. I don't know; he was inside working on something.

Q. What did Mrs. Gillette say when she spoke from outside?

A. She probably introduced herself, I suppose—

Q. And Gillis was working on something at that time and you were on horses; how far from him were you on the horses?

A. In a straight line, it would not be over 15 or 20 feet.

Q. And when Mrs. Gillette introduced herself?

A. Yes.

Q. And what did she say?

A. I don't remember word for word.

Q. And she just said she was Mrs. Gillette, did she? A. Something like that.

Q. Did you know her at that time?

A. No, I didn't.

Q. How long had you been working for Mr. Gillis? A. In Nome?

Q. That's right; how long?

A. I guess about two years; do you mean at

(Testimony of George Newton.)

that time? About one year then.

Q. Did you work for him other places than here?

A. Yes.

Q. Where? A. At the Base—not directly.

Q. You are not related to Mr. Gillis, are you?

A. No.

Q. Are you bookkeeper now?

A. Not altogether; just after working hours.

Q. Was anyone else there then?

A. Probably. There were others working with me. [55]

Q. Well, how did you happen to pay attention to what Mrs. Gillette was saying?

A. Well, I could not help but overhear.

Q. Did Mr. Gillis have an office in that building?

A. No, not there.

Q. He did not have any place where he kept his plans, etc.

A. Well, he kept his tools in a little shack outside.

Q. Now, did he go in there with Mrs. Gillette?

A. I don't know; he might have.

Q. Did you hear what was said in there?

A. No.

Q. Didn't he tell her to come into his office?

A. I don't remember. I remember she wanted him to do something and he said he was too busy then.

Q. And that is all you remember?

A. That's right.

(Testimony of George Newton.)

Q. You don't remember what she wanted him to do? A. Well, I understood it was the house.

Q. Did she say anything about moving the house?

A. Well, that is what they were talking about.

Q. What did they say about it?

A. Well, I just remember the instance—

Q. Well, Gillis said he couldn't do it, and that was all there was to it? A. No.

Q. What else did he say?

A. I cannot remember what he did say, but he did say he had lots of work and couldn't stop that.

Q. Then did they continue to talk?

A. I don't remember. [56]

Q. But you heard Gillis say he was too busy to move the house, is that right?

A. That is right.

Q. That is what he said? A. That is right.

Q. And what did Mrs. Gillette say then?

A. I don't know what she said, because I was busy.

Q. You were not interested in moving the house?

A. No.

Q. But she wanted to move the house from one side of the street to the other?

A. I don't know where she wanted it moved to.

Q. And was that all you heard of the conversation? A. I think so.

Q. And that would be that Mrs. Gillette introduced herself and said she wanted to have the house moved? A. Yes.

(Testimony of George Newton.)

Q. And you did not hear anything else?

A. No.

Q. Did Mrs. Gillette go out then?

A. I don't know.

Q. That is all.

The Court (to C. C. Tanner): Any further questions?

Mr. Tanner: That is all.

Mr. Cochran: One moment—you say on the 16th day of December, 1946, you were walking down Front Street with Mr. Gillis?

A. No, I did not say that.

Q. What did you say?

A. I did not say how we got there, but we did drive around in a truck.

Q. From the Gillis Shop?

A. To the North Pole Bakery. I went with him on the way to the shop, for him to see if there was any material there. [57]

Q. Did you take the tools away?

A. We did, but I did not go for that purpose.

Q. Well, you drove up from Mr. Gillis' place to the North Pole Bakery, and did Mr. Gillis have tools in his truck? A. I don't know.

Q. Well, you had been there, hadn't you?

A. We did not pick up any tools there.

Q. What did you go there for?

A. Well, we were looking for some material.

Q. Did you see lumber lying around there?

A. I don't know.

(Testimony of George Newton.)

Q. You knew you were going down to look for material; didn't you know what material you were looking for? A. I did not, no.

Q. Well, you were driving down the street in the truck with Mr. Gillis; did you stop to see Mrs. Gillette? A. We stopped for a cup of coffee.

Q. And you met her at the North Pole; what did she say?

A. Well, we stopped and asked if she could get some material—I don't remember what she said—

Q. You were employed at the time?

A. Yes, sir.

Q. Didn't you know what material he was talking about? A. Not necessarily.

Q. What material did you take it to be that he was looking for?

Mr. Tanner: Well, if the Court please, I think that is uncalled for—

Mr. Cochran: I am trying my best to find out what kind of [58] material he was looking for. Was anyone else there?

A. Well, I just know she was going in.

Q. Was she mad?

A. No one else was with her. I don't know whether she was mad or not.

Mr. Cochran: Well, that is all.

Mr. Tanner: Plaintiff rests, Your Honor.

Mr. Cochran: Mrs. Gillette, please.

witness sworn.

MRS. IRENE GILLETTE

Direct Examination

By Mr. Cochran:

Q. Mrs. Gillette, your name is Irene Gillette, one of the defendants in this case? A. Yes.

Q. Do you know the boy, George Newton, who testified here?

A. I never saw him before in my life. I did not know who he was.

Q. Mrs. Gillette, did you meet Mr. Gillis in front of the North Pole Bakery in the presence of this boy Newton? A. I never saw the boy before.

Q. Well, in the presence of this boy, on the 16th day of December, 1946, or at any other time, did you tell Mr. Gillis in substance to stop work on the moving of your building across the street?

A. Indeed I never did; I never told him to stop work.

Q. Did you after that time talk to Mr. Gillis or speak to him about completing the job?

A. Yes, sir, I talked to him in the North Pole Bakery. I would say it was approximately two weeks before the 20th of January, because I was going to have a party for a friend's birthday. Mr. Gillis was having coffee at the counter and I walked over [59] and said, "When will you get us into our house"? He said, "I am going to get to it right away." He said as long as the basement is frozen, we cannot finish. I said, "You will never thaw the basement in a million years." Then he said, "I

(Testimony of Mrs. Irene Gillette.)

never wanted to do that job anyway," and I said, "We are very well aware of that, and we don't appreciate letting the work go and going to work for Mr. Jackson after storm."

Q. Was that after the 16th day of January?

A. Yes, somewhere before the 20th, but after the first of the year, because I had that party in mind.

Q. Now, you owned this building on the south side of Front Street, and you own it now, where it is presently located? A. That is right.

Q. When did you negotiate with Mr. Gillis with reference to moving this building?

A. On approximately the 8th of August. I presume it might have been a couple of days before.

Q. Where was he when you saw him?

A. I went to the Masonic Temple and there were a lot of men working there, and I asked for Mr. Gillis and told him I wanted to see him about doing some work; and he said, "Come in my office," and I had no conversation with him whatever in the Masonic Temple or at the door. He did not know at that time what it was I wanted done. I asked him if he could do some work and he said he was very busy and did not know how he could do it; and I said, "Since Ben just came out of the hospital"— [60] well, I rather coaxed him to do it and he didn't say he wouldn't. He said, "I'll take this sketch and give you a cost on it," but we were not interested in the cost, and wanted the house taken care of; and I said, "You have been recommended

(Testimony of Mrs. Irene Gillette.)

to us and I don't think I need any figures." But he said, "We always insist on doing that," and I said, "OK." In a day or two—I don't remember where I was, he brought back my sketch and brought back figures, and gave it as exhibited there.

Q. I hand you Exhibit No. 1 and ask if that is all Mr. Gillis gave you?

A. That is absolutely all.

Q. Does that embody the things he was to do?

A. That is the way we understood it.

Q. And the price? A. That is the price.

Q. I hand you defendant's Exhibit for identification, Exhibit No. 2, and ask you to examine it and state whether or not that is the plat that you refer to as having given to Mr. Gillis when you first saw him? A. That is right, it is.

Q. And on the subsequent day, did—when he gave you Exhibit One, did he return to you this plat? A. That is right, he did.

Q. Had that been changed in any way?

A. Not a bit.

Mr. Cochran: Now, I intended to have a larger plat of this made, Your Honor. However—now, Mrs. Gillette, will you just show the Court what additions on this plat—what was to be put on the building?

The Court: I think I understand it. [61]

Mr. Tanner: Frankly, we would like to see that too.

(Defendant pointed out to Court the work that was to have been done.)

(Testimony of Mrs. Irene Gillette.)

Mr. Cochran: Did he build the addition on the west end? A. No.

Q. And that extended the full width of the house? A. That is right.

Q. Is that what is referred to in the memorandum that he gave you, "to complete the addition as shown"? A. I would say so.

Q. And that was not completed at all?

A. No, sir.

Q. And nothing was done on it? A. No.

Q. Why?

A. Because I told him we were not ready to do it yet. He came down to ask us if we were going to let him do our work and I said yes, but we were not going to put on the 8x30 part; we just wanted the 7x17 porch made into a dining room. We did not say anything about reducing the price at that time.

Q. Did the price of \$2872.28—did that include building this 30 foot addition? A. Sure.

Q. And you told him he need not build that?

A. That's right.

Q. Now, what did he build onto the building?

A. He enclosed one wall, 17 feet. He finished the end of that porch, 7 feet, by roughing it in, and put the asbestos shingles on, and the black celotex was partly on inside. It was never finished. Mr. Metrovich had to put some on when they were trying to warm the place up. There was a rough floor put in, and there was the beginning of a [62] partition because he understood the stairway was to go from

(Testimony of Mrs. Irene Gillette.)

the hall space; they were to be put in exactly as they were, and I believe—I cannot recall anything else—the windows were to be in—when we did not put the back piece on, those windows and doors were put on.

Q. It was specified that no interior work on the whole house was to be done? A. That is right.

Q. And no plumbing? A. That is right.

Q. And no wiring? A. That is right, no wiring.

Q. And all material furnished by you?

A. Yes. He came to us several times to ask if it was all right for him to buy it, and we said it was OK.

Q. Now, Mrs. Gillette, this states moving operations are to be completed in October. Were you definite about the time it was to be completed?

A. Well, we know the storms occur in October, and he put that on himself, and he put that in of his own free will.

Q. Did you make any specification about when it was to be completed?

A. I wanted it by the end of October, when we talked about putting on the 8x30 piece and he said he would not be able to complete that until the—next spring, and I said it was OK. He could not finish the interior, he did not have time, and would have to leave that perhaps.

Q. Did he complete this dining room that he started? A. I should say not.

(Testimony of Mrs. Irene Gillette.)

Q. What did he neglect to complete?

A. Well, there was [63] so much that wasn't done. One thing in particular that was important—I don't know what you call it, the siding from the roof to the main part of the building, and we had so much snow and ice, we had to take it off and fix it over. The snow and ice piled in there thick.

Q. Now, go on and tell us in detail just what he did in connection with the completion of the moving of the building. Was he to restore the building and make it ready for occupancy?

A. Well, I would say so; it was not any good to us the way it was—no steps to go into. The basement was frozen up so we could not—

Q. Did you have to employ Duke Metrovich to install the plumbing?

A. Oh, yes; that was agreed upon.

Q. Now, when did they start to move this building from the south side of Front Street to the other side of the street?

A. On the 14th day of October, he came in and took the stairs out that had been temporarily put in, and on the 15th, about 8 o'clock in the morning, they came and told us we would have to get out. On the morning of the 15th we were eating breakfast and they dashed in and told us we would have to get out and that they were going to move the house. And so we went to the hotel.

Q. How long did he tell you it would take to move the house? A. He did not tell me.

Q. About what distance did he have to move it?

(Testimony of Mrs. Irene Gillette.)

A. Well, Front Street is 90 feet wide, and we are setting back about—when they straighten that corner out, we should be about [64] 30 feet off of Front Street. That is approximately 120 feet—I don't know much about measurements.

Q. Would you say about 200 feet, Mrs. Gillette?

Mr. Tanner: Well, if the Court please, these direct leading questions—I wish counsel would confine himself to the testimony of the witness.

Mr. Cochran: I did not think I was doing that—

The Court: Yes, you put the 200 feet in, Mr. Cochran.

Mr. Cochran: Oh yes, I did do that, Your Honor.

The Court: Well, we will recess for ten minutes.

Mr. Cochran: Did you ever have any other understanding with Mr. Gillis, with reference to the moving of your house other than is stated in this memoranda which he gave you under date of August 8, 1946?

A. Do you mean—any other agreement or understanding?

Q. Yes. Did you ever have any other understanding with Mr. Gillis about the moving of the house? A. No.

Q. It is admitted that you paid to Mr. Gillis on this agreement the sum of \$1000.00, isn't it?

A. That is right.

Q. When was that paid?

A. On October 10th.

(Testimony of Mrs. Irene Gillette.)

Mr. Tanner: Pardon me, Your Honor, apparently the question is again misleading. Counsel has stated that it was admitted that \$1000.00 was paid on this agreement. Now, that is not correct, Your Honor, as far as this being admitted—

The Court: State your question again—

Mr. Cochran: Have you paid anything on this agreement to Mr. Gillis? A. Yes. [65]

Q. What amount was that?

A. \$1000.00 paid through the bank on October 10th. The check is dated October 10th.

Q. Now, when did the plaintiff, Mr. Gillis move your house onto its present location?

A. Do you mean when he started or when he finished?

Q. When he moved it.

A. Approximately November 12th, because that was when the furnace was put in and that was done as soon as the building was on the foundation and it could be done.

Q. Were you deprived of the use of your house after he told you to leave? A. Oh, sure.

Q. And what was the condition of the weather at the time he moved this building onto its present foundation? A. Well, it was pretty cold.

Q. Was it freezing? A. Oh, sure.

Q. How long had it been freezing?

A. Well, quite a while. It was cold weather when we left the house on the 14th of October.

Q. Was there any reason, so far as you were able to determine, why or any reason for not having

(Testimony of Mrs. Irene Gillette.)
moved this house in the month of October?

Mr. Tanner: Just a minute, Your Honor——

The Court: You need not answer that.

Mr. Cochran: All right. Did you make any alterations in your agreement which would provide for the moving of this house later in November?

A. No. [66]

Q. Was it essential to you that the house should be moved in October? A. I should say so.

Mr. Tanner: Just a minute, Your Honor, these continual leading questions—I don't like that——

Mr. Cochran: A leading question, Your Honor, is whether the answer is "yes" or "no," and this does not suggest an answer. The definition of a leading question is very clear.

The Court: Proceed.

Mr. Cochran: Now, were there braces underneath your building in its location on the south side of Front Street? A. Yes, sir.

Q. How many, do you know?

A. I don't know.

Q. More than one?

A. Oh, yes, more than one.

Q. Is there a chimney in your house?

A. Yes, sir.

Q. What is that?

A. Cement, concrete blocks.

Q. And what was the condition of that before it was moved?

A. It was OK, as far as we knew.

Q. Had it been inspected? A. Yes, it had.

(Testimony of Mrs. Irene Gillette.)

Q. Had there been any adverse report on it?

A. No.

Q. What was the condition of that after the house moved?

A. Well, I would say it was pretty bad. It was condemned by Chief Brown when he came down to look at it.

Q. Was it necessary to make any repairs on that? A. Absolutely.

Q. Who made those repairs?

A. Mr. Gillette. [67]

Q. Did you have to buy concrete blocks for it?

A. Yes, we did.

Q. How much did you have to expend for those?

A. Well, I have the bill here. I think we bought seven, or Mr. Gillis bought seven and we bought five. I will have to see my bill. It is kind of hard to remember—we got five chimney blocks from Larry Galvin.

Q. How much did you pay for them?

A. The total bill is \$14.75.

Q. Why was it necessary to get those blocks, Mrs. Gillette?

A. Well, the whole top of the chimney was gone and underneath there was a big hole next to the roof—like this—

Q. Now, after Mr. Gillis moved your place onto its present foundation, what was its condition as to being level? A. It had sagged five inches.

Q. What was the condition of the doors?

(Testimony of Mrs. Irene Gillette.)

A. They were in such a condition that we could not get in.

Q. Was it necessary then to have posts put under there? A. It was, yes.

Q. Was Mr. Gillis requested to do that?

A. Well, Mr. Gillette went up to see him and tell him the floor had sagged.

Q. Did you have to employ someone to put them in?

Mr. Tanner: Just a moment, these questions are leading—they suggest an answer.

Mr. Cochran: Did you employ someone to put them in?

Court: Ask generally what had to be done, Mr. Cochran. [68]

Q. All right. What has been done, if anything, with reference to putting the braces under the house after moving it?

A. We employed Mr. Satterlee to put five posts under the house.

Q. And what did you have to pay for that?

A. That was \$190.00. He did some other things along with that, like chinking up the outside, because there was no skirting on between the house and the foundation. He also put the window in the basement; there had been a gunny sack over that.

Q. Who put that on?

A. Mr. Gillette; and I asked them if they would not board it up. It was never done and I finally got Mr. Metrovich to board it up. The original

(Testimony of Mrs. Irene Gillette.)

window from the old house basement was to go in there, but was never put in.

Q. And what amount did you say you had to pay for that work?

A. Well, Mr. Satterlee's bill was \$170.00 plus \$38.50. The \$38.50 had nothing to do with the contract—whatever it states in there.

Q. Well, what was it you paid for that work?

A. All right, just a minute, and I will tell you; \$175.00 in one check and \$17.00 in the other. That was the two amounts for fixing the window—fixing the window, putting the posts under and leveling the house.

Q. Now, did you do anything with reference to the basement?

A. I don't quite know what you mean.

Q. In the construction of the basement; did you have it dug? A. Yes. [69]

Q. Who did that?

A. Mr. Bronson did some; Eric Nelson did some.

Q. Did you do anything toward drainage or sumps?

A. Yes, we had Mr. Hoop put a barrel in there.

Q. And what happened to that sump?

A. It was filled in.

Q. Who filled it in?

A. Whoever put the backfill in that Mr. Gillis had down there.

Q. State whether or not it was usable after it had been filled in, Mrs. Gillette.

(Testimony of Mrs. Irene Gillette.)

A. No, we had to dig a new one.

Q. And what was the cost of that? The original thawing of the sump was \$39.00 and—I will have to get my check here—\$39.75, I believe—I will get it right here—

The Court: I think we will recess this until 10 o'clock tomorrow morning.

On the 27th day of December, 1947, the following took place:

The Court: Yesterday, when we finished, you had Mrs. Gillette on the stand. I presume you are not finished yet.

Mr. Cochran: No, Your Honor, we were talking yesterday about the waterproofing of the outside of the concrete wall. Now, did you—what did you do—did you do anything with reference to having the outside of the basement waterproofed?

A. I spoke to Mr. Gillis and said that we would like to have it waterproofed—that we would have a man from Nome Motors, and he said, "If you do, it will hold us up putting in the floor of the basement—better [70] not do it.

Q. Did you have the waterproofing?

A. We had the paint and it froze through the winter and he never did use it. It would hold him up, he said.

The Court: What is this backfill that you are talking about? Is it the filling up around the concrete wall?

(Testimony of Mrs. Irene Gillette.)

A. Yes, sir.

The Court: It was bringing the lot up to a level?

A. Yes, sir.

Mr. Cochran: Was that in the basement or on the outside? A. It was on the outside.

Q. Now, Mrs. Gillette, going back to the time that you were given this statement of Mr. Gillis, on the 8th day of August, was—when was that given to you?

A. Approximately a day or so after it was dated, which I don't know if it was the same day or the next day—three or four days from the time I talked to him anyway.

Q. Where did he give it to you?

A. It was in the Nome Motors office.

Q. What did he give you at that time?

A. He handed me the contract and the plan.

Q. Had that original plat or plan that has been offered in evidence—had that been altered or changed in any way? A. No.

Q. Had you discussed that thoroughly with him before it was given to you?

A. I would not say "thoroughly."

Q. Just what did you discuss with him, Mrs. Gillette, as to what was to be done?

A. Well, I did not discuss it a [71] great deal. It was marked quite plainly and we told him that was what we wanted done.

Q. I believe you testified that Mr. Gillis came subsequently and asked about the work, did you,

(Testimony of Mrs. Irene Gillette.)

Mrs. Gillette?

A. He came two or three days later and said, "Did you folks decide to let me do your work?"

Q. Was Ben there? A. Yes, he was there.

Q. Had you shown it to him?

A. Yes, I had, and talked it over.

Q. He did not come inside?

A. Just poked his head in the front door.

Q. What did you and Ben say about his going ahead?

A. We said yes, but we were not going to have the 30x8 built on. The plat showed what we were not going to have done. We did not discuss the price and thought we would never have any trouble with the contract.

Q. What did Mr. Gillis say with reference to the addition to be put on, the 8x30?

A. He did say, when he handed me this plan back and the contract, he said he might not be able to do the inside finishing on the 8x30 until spring. That was the main reason why we did not have it done, because we thought we would be torn up probably through the cold weather or something.

Q. What was the date when Mr. Gillis asked you to get out of the house?

A. It was the morning of the 15th of October.

Q. And when you were able to move back into your house? [72]

A. The 15th day of February.

Q. Were you able to get back into the house before that time?

(Testimony of Mrs. Irene Gillette.)

A. We got in there and got some clothes.

Q. No, I mean back to live in the house.

A. No.

Q. Then you could not live in the house from the 15th day of October, 1946, until the 15th day of February, 1947?

A. The records at the Paterson Hotel will show what date we went in and when we left there.

Q. You are positive of the dates.

A. Yes, I have my cancelled checks.

Q. I believe you stated it was the 12th of November when he moved this building?

A. Apparently, according to Mr. Metrovich's bill to us which is itemized; he said on the 12th of November, he connected up the furnace. He was standing around waiting to put the stuff back into the house—I have no other way of knowing exactly the date.

Q. Now, this cement basement that you had to complete, what had to be done—what was the condition of the basement; the floor of the basement?

A. It was full of ice.

Q. How long were you thawing on that, Mrs. Gillette?

A. Mr. Gillette started in when we got into the house on the 15th of February and thawed for at least four months. He kept water on it and picked there with a pick.

Q. Was that thawed up until the freezing weather last fall?

A. Yes, sure. They put on the backfill, that

(Testimony of Mrs. Irene Gillette.)

was thawed; at least the top part of it. [73]

Q. Now, we talked about the braces yesterday. You testified about having Mr. Satterlee brace the house; it had sagged five inches?

A. Yes, that's right.

Q. Could you open the doors? A. No.

Q. You said you would get together the receipts for payment for the bracing of the house—Mr. Satterlee you said did that? A. Yes, he did.

Q. Have you the receipt for the amount you paid him for that work?

A. I have my cancelled check. I have two cancelled checks; he did two jobs. I have one check for \$175.00 and one for \$17.00; \$15.00 of that was putting in the basement windows; \$175.00 was for the braces and taking off the ice and snow from the roof on the addition.

Q. What was the total amount you paid?

A. \$190.00 we entered.

Q. Are there \$2.00 there we overlooked?

A. The check for \$17.00—\$15.00 in here and probably \$2.00 for something else.

Q. Did this pay for that work? A. Yes.

Mr. Tanner: What work?

A. Taking ice and snow off of the roof, raising the house the five inches it sagged and putting in the basement window that was left out with a gunny sack over it. I think he also finished the partition there that was started and never finished.

Mr. Tanner: In other words, completing the house?

(Testimony of Mrs. Irene Gillette.)

A. Well, we had some more done after that, Mr. Tanner. [74]

Mr. Tanner: Well, that was putting in braces to keep it from sagging?

A. To keep it from sagging again.

Mr. Tanner: Well, what proportion of that was for that?

A. Well, here is a bill here. He had to dig through that ice and frost to put that tank in, and it was because the basement was frozen that he had to do that. We figured that was logical—a charge against the people who let the basement freeze.

Mr. Tanner: Well, in your Answer you have set forth a certain sum for completion or bracing of the house that sagged—what does this represent relative to the sagging?

A. Well, he said that, and he had to brace the stairs up. He has 47 hours charged on that at \$1.75 an hour.

Mr. Tanner: You have made no allegations about the stairs, have you? Now, I want to know the amount you paid for the damage due to the house sinking?

Mr. Cochran: The house sinking?

Mr. Tanner: Yes. I object, Your Honor; they do not show the true amount paid.

The Court: Your answer states that you were advised, by reason of the fact that the residence was left unbraced and that it sagged in the middle and that the doors of the building would not open, the defendants were compelled to have it raised for which \$190.00 was expended. Now, the testi-

(Testimony of Mrs. Irene Gillette.)

mony is that the \$190.00 covered other things.

Mr. Cochran: What it covered—well it covered the fixing of [75] the window in the basement, but as far as the actual payments are concerned and the posts, I would consider having to re-brace part of that too, because it was the house sagging—it was because of that that the stairs had to be taken care of.

The Court: Well, that doesn't indicate—

Mrs. Gillette (Defendant): Well it says here in the memorandum, beams and posts, 47 hours at \$1.75 an hour. It is true that that does include some other things, but it was on account of that we had to have it done—18 hours for the stairway.

Mr. Cochran: Has this been paid?

A. That is part of the check here—this \$175.00 check.

Q. This was for \$175.00—

A. Well, it was for the septic tank and putting the window in for those 35 hours.

Q. Well, I will call Mr. Satterlee on that. Now, was there a sump prepared in this basement?

A. Yes, there was.

Q. Explain what that was.

A. We had Mr. Hoop come with his equipment and thaw several holes there and then they put down this barrel, a big tank, to use, and the drain was under where he thawed out.

Q. What happened to that?

A. That was filled in.

Q. By whom? A. By Mr. Gillis.

(Testimony of Mrs. Irene Gillette.)

Q. What did you have to do subsequently?

A. We had to dig a new sump. [76]

Q. And what was the cost of digging that?

A. The original cost of Mr. Hoop's bill was \$39.75.

Q. Did you pay that?

A. I have the cancelled check for that.

Q. You paid that, did you? A. Yes, sir.

Q. And you have the cancelled check for it?

A. Yes, I do.

Q. Now, I think you testified that the condition of the basement as having been frozen; was the plumbing damaged by reason of its freezing?

A. Yes, according to Mr. Metrovich's bill, it was.

Q. Just—was it damaged?

A. According to Mr. Metrovich's bill he sent in—I could not swear to that, but according to the bill it was, and we paid him for repairing it. He says here, "Repairing plumbing."

Q. That was Duke Metrovich? A. Yes.

Q. How much did you have to pay for that?

Mr. Tanner: Just a minute, Your Honor, they are trying to establish this as being the fault of the plaintiff—what was paid makes no difference unless they can identify it.

Mr. Cochran: It has already been testified that the basement was frozen up by reason of this man's delay, and this damage in particular is by reason of the freezing of the plumbing in the place on ac-

(Testimony of Mrs. Irene Gillette.)
count of its not having been done within a reasonable time.

Mr. Tanner: From whose testimony?

The Court: She has already testified that she cannot testify to it—

Mr. Cochran: Mrs. Gillette, the—what expense, if any, did [77] you have in repairing the chimney in this building?

A. Well, we bought five concrete blocks. We are charged with seven by Mr. Gillis in his bill.

Q. Well, I don't care anything about that—

A. Well, there was a cost—we bought five blocks and it took Ben approximately 32 hours to repair it.

Q. 32 hours? And what was the cost of that?

A. The five we bought cost \$14.75. The seven Mr. Gillis is trying to collect for is \$20.65.

Mr. Tanner: Just a minute, Your Honor, trying to bring in other stuff relative to bills and what they have expended—let's stay on one item—

Mr. Cochran: I am on paragraph 12 of the Answer, just as alleged—

Mr. Tanner: Well, let's not have the witness bring in what they are charged for.

Mr. Cochran: Mr. Gillis has us charged with items for the chimney which was condemned by the fire chief. It was in good condition when it was moved.

Mr. Tanner: And it has not been paid—

Mr. Cochran: It was through his negligence that the chimney had to be repaired. He has charged for blocks used on the chimney destroyed by his own

(Testimony of Mrs. Irene Gillette.)

negligence and he should not be able to charge us with any blocks that he bought for that, which was made necessary by his own negligence.

The Court: I take it that both the five blocks and the seven blocks were secured after the moving of the house? [78]

Mr. Cochran: I presume so, Your Honor. Mr. Gillis claims he put in seven blocks himself.

The Court: It is charged in the moving of the house?

Mr. Cochran: Yes, that is right, Your Honor.

The Court: Well, why are you putting in evidence?

Mr. Cochran: Well, he is charging us with seven more.

The Court: They have not been paid for. You are asking for repair of furnace and that has not been paid for; therefore, you cannot ask \$100.00 for them.

Mr. Cochran: Yes, Your Honor—I will probably ask more—

The Court: You are asking \$100.00?

Mr. Cochran: That is true, and I am attempting to prove it.

The Court: You cannot prove something you have not paid.

Mr. Cochran: She already testified that it was 37 hours.

The Court: Objection will be sustained. Proceed with your examination.

Mr. Cochran: Now, the completion of the dining room—did you have to have that completed?

(Testimony of Mrs. Irene Gillette.)

A. Yes, sir.

Q. Mr. Gillis did not complete it?

A. No, sir, he did not.

Q. Who did the work? A. Mr. Margraf.

Q. And what was paid for that?

A. \$260.00.

Q. You paid him that amount?

A. Yes, \$260.00.

Q. That is item 13. Now, did Mr. Gillis take a pump away? A. Yes, he did.

Q. What was that pump?

A. It was a Burk's pressure pump.

Q. Has that ever been returned?

A. No, it never has. [79] Tony asked for it—I don't know his other name.

Q. Was he in charge of the work there?

A. He was working there. He said he needed it somewhere else and it would help him.

Q. Do you know what that pump cost?

A. Approximately \$150.00. We cannot find our bill because the storm washed the bills out of the basement.

Q. Now, the corner that was cut off of the cornice of this building—has that ever been repaired?

A. No, it has not.

Q. As to the cutting of that off—did you authorize Mr. Gillis to cut that off?

A. I did not.

Q. Did you know anything about it?

A. No, he came into the office—

(Testimony of Mrs. Irene Gillette.)

Q. Did Mr. Gillis have any conversation with you with reference to that?

A. Well, he came to the office——

Q. What do you mean by "the office"?

A. The Nome Motor Company office, and he said, "We have got to cut the corner off the cornice," and I said, "Why don't you have the telegraph poles removed"?; but when I came back, the corner was cut off.

Q. Did he have the telegraph poles moved?

A. He did.

Q. What do you estimate the cost of repairing the cornice that he took off?

A. I would say \$100.00.

Q. That has been repaired? A. No.

Q. Now, what is the condition of the walls of the basement at this time?

A. They are cracked in various places—the water seeps through whenever it is thawed. [80]

Q. Mrs. Gillette, you were kept out of your house from the 15th day of October until the 15th day of January?

A. No, until the 15th day of February.

Q. February? Did you have to incur any expenses by reason of having been kept out of your home during that period?

A. We not only had to live at the hotel, but had to keep a fire in the furnace at the house. We had a big oil bill, the lights were on all night, and we had to pay a hotel bill of \$410.00—I have my checks for that—and we had to eat at the North Pole Bakery.

(Testimony of Mrs. Irene Gillette.)

Q. And expenses for your meals — about how much for that? A. \$412.00.

Q. Now, Mrs. Gillette, was that more than it would have cost you to live at home?

A. Very much more, yes.

Q. Approximately what percentage more?

A. Well, our lights and heat were an additional expense too —

Q. No, I am speaking of your board.

A. Well, it is a little hard to estimate that, but anyone who eats at the North Pole knows that it costs at least as much as at home, I would say at least twice as much.

Mr. Cochran: You may cross-examine. No, just a moment — was there anything else?

A. Well, I don't think so.

Mr. Cochran: All right, you may cross-examine.

The Court: Just a minute — one of these exhibits has not been introduced as evidence. It has been introduced for the purpose of identification only. [81]

Mr. Cochran: I think I introduced them in evidence, Your Honor. Well, it has been offered for identification and I ask now that it be introduced in evidence.

Mr. Tanner: Let me see it, will you?

Mr. Cochran: I can give you a copy of it, if you wish it, Mr. Tanner.

Mr. Tanner: Well, we won't object to it, Your Honor.

The Court: It may be entered as evidence and marked "Defendants' Exhibit 2."

(Testimony of Mrs. Irene Gillette.)

Cross-Examination

By Mr. Tanner:

Mr. Cochran: Pardon me a moment, I am not positive that you testified about the conversation in front of the North Pole Bakery.

Mr. Tanner: That was testified to—

Mr. Tanner: Mrs. Gillette, during the storm of '45, of course your building was placed in a kind of precarious position, wasn't it?

A. Well, the bulkhead was washed out—

Q. Well, it placed it in a bad condition, didn't it—damaged possibly? A. Sure.

Q. And that was your reason for being very anxious to get it moved?

A. Of course; that is right.

Q. Now, prior to seeing Mr. Gillis, you had had Mr. Green working on it, had you?

A. That is right.

Q. And that was when you had part of your basement dug out? A. Yes.

Q. And he had gotten quite a bit of lumber? [82]

A. He had ordered 6400 and some feet of lumber.

Q. Yes. Why didn't Mr. Green continue with the work?

A. He said he could not get the work done properly. His best man was on a long drunk and he said he did not see how he was going to be able to do it.

Q. And he said he would gladly pay you for any damages that may have been caused?

(Testimony of Mrs. Irene Gillette.)

A. Yes——

Q. You did not have any contract with him to do the work? A. We did not, no.

Q. Then after that, you go and see Mr. Gillis?

A. That is right.

Q. And upon recommendation of friends, and so on, as to his reputation? A. Yes.

Q. In other words, he had a good reputation?

A. One man had told us so.

Q. In other words, as far as you could learn, he had a good reputation?

A. Well, I would rather not go into that.

Q. Well, didn't you say that?

A. This one man told us that.

Q. Now, Mrs. Gillette, when you go to see Mr. Gillis the first time, he is in the Masonic Building?

A. Yes.

Q. And you speak to him at the door first?

A. I asked for him.

Q. And introduced yourself at the door, is that right? A. Yes.

Q. And in your first conversation with Mr. Gillis, he objected to the work on the ground that he could not do it? A. Yes, he said he was too busy.

Q. And then of course you were very anxious that it be done, weren't you? A. That is right.

Q. And so, in a sense, you put up an argument for him to do it?

A. Well, that is a natural thing, isn't it?

Q. But you were very anxious to have the work done under the circumstances?

(Testimony of Mrs. Irene Gillette.)

A. Yes, that is right.

Q. And so you went into his shop then to discuss the matter? A. That is right.

Q. And you state that you had this little plan?

A. Yes, I did; otherwise he would not know what to tell me.

Q. Well, that was not a very good plan, was it?

A. It was as good as I could do.

Q. Prior to that time, you had given it to Mr. Green?

A. No, Mr. Green talked us into selling that house and getting a new one.

Q. And you were going to build a new home at that time? A. Well, if we had sold this one.

Q. At any rate, Mrs. Gillette, you only considered this a rough sketch as to how you thought you would improve the old building?

A. Well, it looks rough, but it is very definite and the house shows it now, finally, with that little porch enclosed.

Q. Well, have you a bill of particulars as to just what kind of material was to be used?

A. No, we do not.

Q. In other words, that was to be left to your instructions?

A. I don't know that anything was said about it—you don't [84] have a room built on with a bunch of holes in it—

Q. Well, Mrs. Gillette, there are a lot of ways to build an addition.

A. Well, we agreed to furnish the material.

(Testimony of Mrs. Irene Gillette.)

Q. Then, there was nothing discussed with Mr. Gillis relative to the kind of materials that would go into the building? A. No, there was not.

Q. In other words, that was left to your instructions? A. On the contract it says so.

Q. And you were assuming it was a contract?

A. It was, as far as I was concerned.

Q. So you had no details on the matter, except this little sketch of yours? A. That is right.

Q. And at the time when Mr. Gillis told you he was tied up with work and that he could not see his way clear to do it, you told him, of course, that you had the materials and would furnish them, didn't you?

A. Well, I did not know what we needed myself—I changed my mind several times.

Q. But you did know, however, that you wanted the building moved and a general idea of what you wanted done?

A. Well, it was right there on that sketch what I wanted.

Q. Now, Mrs. Gillette, after outlining the work that you anticipated and wanted done in the emergency, didn't you ask Mr. Gillis what he thought the approximate cost of that would be?

A. No, I was too anxious to have the work done.

Mr. Tanner: Now, Mrs. Gillette—— [85]

The Court: Now, please don't argue back and forth——

Mr. Tanner: Well—so you said you did not ask for any estimate at all?

(Testimony of Mrs. Irene Gillette.)

A. I did not, Mr. Tanner—I have already testified to that.

Mr. Tanner: Nor did you ask for a contract?

A. No, sir, I did not.

Q. Under your ideas, and so on, Mr. Gillis was to have nothing to do with the plumbing, was he?

A. No, sir.

Q. And I understood you to say that Mr. Gillis did not tell you how long it would take to move the building?

A. It says on the exhibit there that it would be—

Q. I said, did he tell you—and I will ask you if this is true, you said he did not tell you how long it would take?

Mr. Cochran: I object to that. He put it that she did testify. That is assuming something that is not true—

The Court: Well, don't argue about it—

Mr. Tanner: All right. Did you or didn't you state on your direct examination that Mr. Gillis did not tell you how long it would take to move the house?

A. Well, he did not tell me. He did not discuss this except what he wrote on that paper—on the exhibit.

Q. All right. Now, Mrs. Gillette, when, prior to the moving of the building from the original location on the beach side, prior to that building being moved into the street from its original location,

(Testimony of Mrs. Irene Gillette.)

when did you have the chimney examined?

A. I do not know; whenever the fire chief did it. We did not ask him to. [86]

Q. You don't recall when it would be?

A. No, I don't.

Q. Now, when did you first learn that the building had sagged on its new foundation?

A. Mr. Metrovich came to me and said, "You better do something about your house; I don't think Mr. Gillis is going to finish it and it's beginning to sag."

Q. When was that?

A. Well, I will tie it in with something; he said, "You better do something about it"; I cannot tell you exactly the date.

Q. Well, I want to know about the time—

A. Well, it was a couple of days, because I came home and—

The Court: Can you place that date? That is the question.

A. Well, it is a matter of trying to remember. We estimate that he went up there the latter part of January, or somewhere in there.

Q. And it would be just a short time before that?

A. No, he went right away when we knew he wasn't going to finish it or had not even mentioned it.

Q. Your basement is frozen ground?

A. No, it isn't.

Q. I understood you to say you had Mr. Hoop thaw out a sump.

(Testimony of Mrs. Irene Gillette.)

A. That was below the house; well, that portion is frozen ground.

The Court: Is that west of the present house?

A. It is south.

Mr. Tanner: Near the beach?

A. Well, it is toward the beach.

Q. Now, calling your attention, Mrs. Gillette, to your statement that you could not go into the house until February 15th, [87] am I correct in stating that you testified on direct examination that you had a party in your house on January 20?

A. No. That was why I spoke to Mr. Gillis and I said I wanted to have a birthday party there, and that I wanted to get into the house for Christmas and New Years, and then that I wanted to have this birthday party particularly. I did not say I had one; I said I wanted to have one.

Q. Now, of the work that was done by Mr. Gillis—not what was not done, but I am referring to the work that was done, will you state for us, please, the work that you considered was done in an unskillful and unworkmanlike manner?

A. Well, the way I look at it now, I don't feel that any of it was done right—it was not finished.

Q. Well, Mrs. Gillette, I am speaking of the work that was done please.

A. Well, I would not be able to say on the forms that he fixed up—I do not know. I know the cement walls are a very bum job.

Q. In what respect?

(Testimony of Mrs. Irene Gillette.)

A. There is no finish to it. It is very poorly done. We have done as much with it as we could. The stairway is a joke—

Q. How should it be done?

A. I don't know but that it should look like some of these other places that have been done—I know the stairway is a joke certainly.

Q. Was that finished?

A. No, sir, it was not.

Q. Now, I am speaking of the work that was done, Mrs. Gillette—

A. Well, there was nothing finished. I will say the three windows that were put in are good. [88]

Q. They were finished, were they?

A. Yes, and the door casing that was put on. Outside of that, nothing was finished.

Q. So that your main objection is that the work was not finished? A. That is right.

Q. And you feel that the damages have resulted, not from the work that was done, but that which was not done?

A. Well, if you could call letting the basement freeze because the work wasn't done, that is right.

Q. Now, speaking of the sump, Mrs. Gillette, tell us a little more about that—just what purpose the sump was fulfilling and what was done.

A. Well, it was filled in so we could not use it. That was to be used for the overflow for the septic tank.

Q. It was not drained from the basement?

(Testimony of Mrs. Irene Gillette.)

A. No. It was to be the overflow.

Q. You, of course, were to have the basement ready for the cement? A. That's right.

Q. Yes. Now, relative to the filling and backfill, if any, that was really your original idea—that was your responsibility, wasn't it?

A. No, I wouldn't say that. I don't know whether it needed a backfill. Mr. Gillis said it needed it, and I presumed it would have to have it.

Q. Yes. That was when you proposed it?

A. No, I was not the one that told him. If anything about it was discussed, it was discussed with Mr. Gillette, not with me. [89]

Q. And when you talked to Mr. Gillis about it, that was not to be a responsibility of his?

A. No, he said he had Mr. Young put that in—I don't know what responsibility that would be.

Q. Did you, or anyone that you know of, point out this sump to Mr. Gillis?

A. I did myself. I said, "Don't fill up our sump."

Q. To Mr. Gillis? A. Yes.

The Court: I think we will take a 15 minute recess.

Mr. Tanner: Mrs. Gillette, you and your husband ordered the backfill around the basement put in?

A. We did not order it. They came and said it needed it.

Q. At that time you knew, of course, you knew the finishing had not been put on?

(Testimony of Mrs. Irene Gillette.)

A. Well, I spoke to him about it then.

Q. But you knew it was not on at that time?

A. Yes, sure. He would not let us put it on.

Q. Now, as a matter of fact, under the general plan that was suggested and under the exhibit which says "full concrete basement," there is no specification there as to any water-proofing, is there?

A. No, we wanted to do it ourselves. It was our own idea.

Q. Yes. Of course, under your arrangement as you have testified, there was no time specified as to when payment should be made or anything of that kind? A. No, there was not. [90]

Q. And during that time, Mr. Gillis told you he would not be able to complete the rooms, and so on, until the next year?

A. That was the part we did not build.

Q. Now, calling your attention to the plumbing, Mr. Metrovich had that in his hands?

A. That is right.

Q. And the draining of the pipes?

A. That is right.

Q. The responsibility was not on Mr. Gillis?

A. No.

Q. And so that, Mrs. Gillette, as a matter of fact, if the pipes froze, it would be Mr. Metrovich that would be responsible?

A. Well, I don't quite understand that myself. He said in his bill, "Due to the basement freezing." Well, it kept freezing because there was no base-

(Testimony of Mrs. Irene Gillette.)

ment, and we had to buy a lot of chinking and put in there where the house met the foundation. It is a small matter, \$24.00—I would not argue about that.

Q. Well, the pipes and everything I take it, were drained before the house was moved? A. Yes.

Q. So it was not Mr. Gillis that ordered the furnace to be started again, was it?

A. Well, he kept it going all winter—somebody did.

Q. But any trouble in the plumbing would not be Mr. Gillis' fault, would it?

A. Well, I wouldn't argue about \$24.00 anyway. It is a small item; we have so many we left out of that bill that it is sickening right now to think we did not find them—\$20.00 for oil, a ton of coal—

Q. Just a minute. Let me ask the questions, please.

A. Well, no one would know if they weren't mentioned— [91]

A. Well, you would not know about that unless I mentioned it—

Q. As a matter of fact, Mrs. Gillette, we did have a bad storm in 1945, didn't we? A. Yes.

Q. Did you know your flue had not been inspected from that date?

A. I don't imagine so; I would not say.

Q. So that the condition of it after the 1945 storm, you would not know about?

A. No, I would not swear to anything, but the furnace burned all right.

(Testimony of Mrs. Irene Gillette.)

Q. Well, all right. Now, relative to this sump that you talked about, Mrs. Gillette, you mentioned that the cost—as a matter of fact, how was it fixed?

A. There was a big tank put in there. I know it was, and there was a tank outside connected with this sump, and there was a big oil tank put in—

Q. It was to be used as a cesspool?

A. It was to be an' overflow.

Q. Now, what did it cost?

A. \$39.75. We did—we could not find the barrel until a long time afterwards. We have found it since, but we did not find it at that time.

Q. Now, Mrs. Gillette—you have mentioned—you stated that Mr. Gillis took a pump away and then you stated that Tony asked you for the pump—

A. Yes, he said he needed a pump and it seemed to me he said on Carlson's job or something, and I was sort of anxious to be accommodating.

Q. As far as you know, Mr. Gillis did not talk about that?

A. I presume not. As far as I know, Mr. Gillis had nothing to do with it. [92]

Q. Now, Mrs. Gillette, you first stated, I believe, didn't you, that you did not know anything about the cutting off of the cornice?

A. Not until it was done.

Q. Well, then didn't you state afterwards that Mr. Gillis came down to the office of the Nome Motor Company and told you that he was going to cut it off?

(Testimony of Mrs. Irene Gillette.)

A. Well, he had already cut it off—he must have, because I went down there that night and it was done—

Q. When did he see you?

A. Well, after 5 o'clock, I went down to see what had happened. I don't know when he did it, but before he moved the poles it was done.

Q. As a matter of fact, you don't know that it was done before he spoke to you?

A. It would not need to have been done if the pole was moved.

Q. You did make the statement, though, that it was done before that? A. Well, I could have.

Q. Now, Mrs. Gillette, you state you spent quite a long spell in the hotel and so on; when did you start to have repairs done which were necessary for you to go into the house?

A. Well, right after Mr. Gillette was up to see Mr. Gillis—I would say sometime about the 28th of January—about that time anyhow. You say we got into the house—well, the matter of getting into the house was a matter of getting some steps before we could get into the place.

Q. Yes, you told us that; but what I want to know is that the records show in this case that the work ceased on the [93] 16th day of the month?

The Court: What month was that?

Mr. Tanner: The 16th day of December, Your Honor.

A. Well, we talked to Mr. Gillis in the North

(Testimony of Mrs. Irene Gillette.)

Pole at least a couple of times after that, and he said he would be down any day.

Q. When did you talk to him?

A. I know it was after Christmas. It was after he got married, and that was about the first of the year.

Q. When you say "we," whom do you mean?

A. My husband and I. We had to eat at the North Pole.

Q. Now, you told us under direct examination that at one time you claimed you saw Mr. Gillis in January.

A. Yes. He was sitting at the counter at the North Pole, and we did very meekly ask him when he would get at our house. We just sat at the table and asked him how he was getting along with it.

Q. Well, you say you were very meek about it—

A. Well, the only time I got mad was when he said, "Well, I didn't want to do it anyway," and I said, "I am well aware of it"; I never got mad before.

Q. All of the time that you were so meek, during that time, you knew that the contract had been broken?

A. Well, I did not say that—what you call a contract, I did not know that it was broken; as far as I was concerned, it wasn't. [94]

Q. In other words, Mrs. Gillette, you did not consider your—what we call an estimate, you did

(Testimony of Mrs. Irene Gillette.)

not consider moving operations to be completed in October as a violation of contract when they weren't, did you?

A. Well, I was not even thinking that way. I intended to pay every cent of that \$2800 as soon as the work was finished. I could have had fourteen people as witnesses if I had had any intention of a broken contract, or had known there would be a broken contract.

Mr. Tanner: That is all.

Mr. Cochran: That is all.

The Court: Call your next witness.

BEN F. GILLETTE

sworn.

Direct Examination

By Mr. Cochran:

Q. Your name is? A. Ben F. Gillette.

Q. Irene is your wife? A. She is.

Q. And you are one of the defendants in this case? A. I am.

Q. Do you know Mr. Gillis? A. I do.

Q. How long have you known him?

A. Oh, a little better than two years. He said he didn't know me, but I knew him.

Q. You are familiar with the house that was moved, as alleged in this case?

A. I have lived in there 12 years, yes.

The Court: Just answer the question, Mr. Gillette. You don't need to make any remarks.

Mr. Cochran: Did you have an agreement with

(Testimony of Ben F. Gillette.)

Mr. Gillis about moving this house?

A. I saw the agreement—I took it for an agreement, a contract. [95]

Q. When was that, Ben?

A. Well, when she—my wife got it up at the Nome Motors office and brought it down.

Q. About what time was that?

A. Well, I would say it was around the 8th of August. That was when the agreement was made. It was later than that that we got it, I think.

Q. Ben, I will show you defendants' Exhibit No. 1 and ask you if you recognize it.

A. Yes, that is the one I saw and I took it for a contract.

Q. When did you first see this, Ben?

A. Well, I think it was sometime after the 8th of August; I could not say exactly the time.

Q. Who showed it to you?

A. My wife had it.

Q. Did you read it?

A. I did. I took it for granted that we would pay that when the work was completed.

Q. I show you now Defendants' Exhibit No. 2, a plat of the building; do you recognize that?

A. I do; that is her own drawing.

Q. Was that with this agreement?

A. Yes, it was.

Q. Did you see Mr. Gillis with relation to this agreement? A. I did.

Q. How long after?

(Testimony of Ben F. Gillette.)

A. When he was going to move the building. He came down and measured and I went down and told him how the windows were to go in and all that.

Q. Well, did Mr. Gillis speak about this agreement?

A. Well, I took it for granted he was going to do the work.

Q. Did he say he was going to do the work?

A. No, he didn't. [96]

Q. Were you there then?

A. I was. I said—

Mr. Tanner: If the Court please, again the leading questions are coming in. I don't like the witness lead by these leading questions.

Mr. Cochran: Well, I think he should be allowed to tell the Court what occurred at that time—

A. I told him to go ahead on the contract.

Q. What time was that, about, as near as you could fix it, after the 8th of August? About how long was that? A. It was a short time.

Q. Now, Mr. Gillette, after you told him to go ahead on the work, when did he start on it?

A. When did he start? Well, I think it around the 16th of September—

Q. What did he do then, Ben?

A. He started to tear out the forms out there, and he poured cement—

Q. Did you say the 16th of September?

A. About the 16th of September. He had no record, as he said—

Q. What did he start to do then?

(Testimony of Ben F. Gillette.)

A. To move those forms that were in—that Bud Harper put in.

Q. Was that September or October?

A. That was in September.

Q. In September? The 16th? A. Yes.

Q. Where were you?

A. I was at the door looking out. I could not get around much, but I could see everything that was going on.

Q. And you saw them pour the concrete?

A. I did.

Q. Can you tell me how many men were employed?

A. There were nine men and Gillis made the tenth. They did not work nine [97] or even eight hours.

The Court: Now, just a minute, did anyone ask you how long their hours were?

A. No.

The Court: Then answer the questions; only the questions that are asked.

Mr. Cochran: Mr. Gillette, when were you able to move into this house? After it was on its foundation?

A. Why, we left the hotel on the 15th of February.

Q. When did you move out of your house?

A. We left on the 15th of October.

Q. And were you able to live in your house between the 15th of October and the 15th of February?

A. No.

(Testimony of Ben F. Gillette.)

Q. Now, Ben, when did you learn that Mr. Gillis was not going to do any more work on your house? When did you learn that?

A. I never learned it myself at all—I never heard it.

Q. And did you go to see him in January, Ben?

A. Yes, I did; I waited fifteen minutes out on the street.

Q. What time in January was that?

A. It was the latter part.

Q. This year?

A. No, last year—that is, last winter.

Q. Why did you go to see him?

A. Well, Duke was to do the plumbing down there and he said the doors would not open and the building sagged, and I went up to see him about that.

Q. That was sometime the latter part of January? A. That is right.

Q. Then when did you see Mr. Gillis, Ben?

A. After I waited fifteen minutes outside of his shop. [98]

Q. Was anyone else there when you saw him, Ben? A. He came out alone.

Q. What did he say?

A. He said, "Why hello, Ben."

Q. What conversation did you have with him at that time?

A. Well, I told him we could not get into the house; he told me to nail a couple of 2x4's up and put under—

(Testimony of Ben F. Gillette.)

Q. Did he tell you at that time that Mrs. Gillette had ordered him to quit the work?

A. No, he did not.

Q. When did you hear that?

A. Not any time.

Q. Did Mrs. Gillette tell you that?

A. No, she never told me that.

Q. Now, Ben, state the full conversation you had with Mr. Gillis the latter part of January.

A. I waited out there fifteen minutes for him to come out—

The Court: Get to the conversation—

A. Well, the conversation was about the raising of the building over the floor and he spoke about moving the tools away and told me to nail a couple of 2x4's together and put under there, and I told him I would have to get Satterlee to do something there then, and that was the last word we had.

Q. What was the condition of the flue in your home when he started to move the house?

A. Well, it had been wrecked in moving—

Q. Well Ben, what was the condition before he moved it?

A. It was in good shape; a good job had been done at first. [99]

Q. Was it wrecked in the moving then?

A. It was.

Q. Explain how it was wrecked.

A. Well, I don't know, but they were jarred loose, the bricks, and up in the attic there was stuff

(Testimony of Ben F. Gillette.)
that had been half put together and, in going through the roof of the building, it was $2\frac{1}{2}$ inches out of line—

Q. Was the flue inspected by anyone, Ben?

A. By the fire chief.

Q. And did you repair the flue? A. I did.

Q. Was it necessary?

A. Sure, it was a fire hazard.

Q. What expenditures did you make in the repairing of the flue?

A. Well, I tore out some of the old blocks and replaced them and cut out part of the roof and put in five new bricks.

Q. How long did that take you?

A. Around 30 or 32 hours, something like that.

Q. And who did you get the extra blocks from?

A. From Larry Galvin.

Q. Was it necessary to wreck that flue entirely in moving the building?

Mr. Tanner: Well, if the Court please, I don't like to keep objecting, but these are leading questions again.

The Court: I don't think it is a proper question, Mr. Cochran—

Mr. Cochran: Now, where was this building first moved to?

A. Well, it was moved from the beach up onto where it stands now.

Q. When was it moved from the beach? When it was started? A. That's right. [100]

(Testimony of Ben F. Gillette.)

Q. When did they start to move the building?

A. On the 15th of October.

Q. Where? A. Out into the street.

Q. How long did it remain in the street?

A. Oh, I cannot tell you that.

Q. Well, about how long?

A. Well, it was a long time; I would not say about how long.

Q. Now, did the plaintiff in this case complete the basement? A. He did not.

Q. What did he fail to complete?

A. He did not put in the basement floor—

Q. Did you discuss with him the basement floor?

A. I did, and told him where I wanted the hole for the septic tank.

Q. Was there a septic tank, you say, Ben? What did you tell him about that?

A. Yes, the septic tank was to go straight down from the floor above and there were two places to be left open when the cement was put in.

Q. Was that filled up—did you have an excavation made for a septic tank?

A. No, we did not, but I meant for him to leave a hole in the cement.

Q. He did not put in the cement, did he?

A. No.

Q. Well, who put in the floor? A. I did.

Q. What was the condition of the floor as to being frozen or thawed?

A. Well, I thawed on it four months with wood,

(Testimony of Ben F. Gillette.)

coal and the furnace, and I had a pump there that I circulated the water through; and I picked frost and got it in [101] shape before starting to put the floor in.

Q. Was it necessary to thaw it?

A. It had to be thawed.

Q. How did it happen to freeze?

A. By not putting in the floor when it should be.

Q. Was the form in there in ample time before the frost?

A. Sure. He put in the floor on the 20th of October and he held it up—

Q. Now, Ben, if the building had been put on and properly cared for, would the floor have frozen?

Mr. Tanner: Just a minute, Your Honor, these leading questions again—

The Court: I don't think any foundation has been laid—and I don't mean the floor foundation. Well, it is 12 o'clock; we will recess until 1:30 this afternoon.

Direct Examination

(Continued)

By Mr. Cochran:

Q. Mr. Gillette, how many cubic yards of cement did Mr. Gillis pour for the walls of this basement?

A. 24 cubic yards.

Q. How long was he in pouring it?

A. Well, about eight hours with the gang he had.

Q. Do you know how many men he had pouring this?

A. He had nine and himself made ten.

(Testimony of Ben F. Gillette.)

Q. You saw the process of pouring?

A. I saw it from the door there, yes.

Q. Of your house? A. Yes. [102]

Q. Has the basement floor been poured—laid?

A. I poured it, yes.

Q. You testified as to how long you were thawing it out, didn't you?

A. Yes, it was about four months.

Q. Now, how long were you occupied in thawing this basement and in pouring the concrete?

A. Well, it was between those four months I was pouring the concrete.

Q. What would you say was a reasonable value of your labor in pouring this concrete?

A. Oh, about \$325, or something like that.

Mr. Tanner: Just a minute—do you want something to refresh his memory? I would like to know the purpose—

Mr. Cochran: What was the reasonable value of your work, Ben?

Mr. Tanner: Just a minute—the witness has not established the work so we can tell anything about it, and it seems to me the time put onto that job is too indefinite and uncertain to be permitted—

Mr. Cochran: Well, he said he was about four months—

The Witness: Well, about an hour every day building a fire—

The Court: Just a minute—it seems to me that the reasonable value of this should come from one whose skillfulness and ability is established.

(Testimony of Ben F. Gillette.)

Mr. Cochran: All right. What was the size of the basement floor? A. It was 24x30.

Q. And what thickness was the floor?

A. I put it down four inches thick—cement.

Q. Can you give me approximately the number of hours you put in in thawing, and the basement floor preparing to put in the cement, and putting it on? Putting the cement on?

A. Oh, about 160 hours.

Q. Do you know what is paid regularly in Nome for that character of work?

A. I don't know.

Mr. Tanner: Just a minute—this man has not established himself.

The Court: The answer was that he doesn't know.

Mr. Cochran: Now Ben, did you do all the work yourself in pouring this basement floor?

A. I did.

Q. And there were close to nine cubic yards put on the floor? A. Of cement? Yes.

Q. You mixed it all yourself? A. I did.

Q. Now, then Ben, when they put the building on this basement, had the building sagged?

A. It was sagged, yes, when we could not get into it.

Q. What do you mean, when you could not get into it?

A. The doors would not open.

Q. How much had it sagged?

A. Well, Pete Satterlee raised the posts and he

(Testimony of Ben F. Gillette.)
said four inches.

The Court: Don't say what someone else said. If you know yourself, you may answer.

The Witness: Well, it was sagged between four and five inches.

Mr. Cochran: Was it necessary to have that leveled before you could open the doors?

A. It was, of course.

Q. And did you have those posts put in?

A. We did. [104]

Q. Were there posts put into the building before it was moved? A. I did—

Mr. Tanner: Pardon me—the witness has not testified to that; it is just leading again—

Mr. Cochran: Were there any posts in the building before it was moved? A. There were.

Q. How many?

A. Well, about 8 feet apart, running right through and 24 in length.

Q. Now, who put those posts in for you, Ben?

A. When the contractor built the house—

Q. No Ben, I mean after it was sagged on its present location? A. Oh, Pete Satterlee.

Mr. Tanner: Pardon me, I am confused myself—I understood you to ask if there were any braces in there, apparently meaning before it was worked on—

Mr. Cochran: Yes. On the south side of the street when the building was built—

The Court: I think it was testified to that the

(Testimony of Ben F. Gillette.)

posts were put in there originally when the house was built.

Mr. Cochran: Did you get a bill from Mr. Satterlee for this work? A. Yes.

Q. (Mrs. Gillette, where is that bill?) (Paper handed to Mr. Cochran.) Is that the bill you got from Mr. Satterlee for that work?

A. It is. That is the bill, in his writing.

Q. I offer this bill in evidence. There was another item [105] in the cesspool, included in this check and not segregated.

Mr. Tanner: It is still not segregated, is it?

Mr. Cochran: Yes, it is the first item there; we apparently have got to lose that. It is all together, Your Honor, but it is segregated in the bill.

The Court: Well, it can be segregated by the testimony.

Mr. Cochran: That is just what I am going to do, Your Honor.

Mr. Tanner: There is nothing to show where that bill is from—

The Court: Well, it is testified to—

Mr. Cochran: The first item is the one, Your Honor—

The Court: That is the septic tank, 35 hours, the second item is 47, and then the work around the stairs is the third item, apparently.

Mr. Cochran: That was the siding.

Mr. Tanner: If the Court please, the witness keeps pulling out a paper and I don't know what it

(Testimony of Ben F. Gillette.)

is—I don't want to see it continually referred to—

Mr. Cochran: Well, we will show it to you. Now, referring to that bill, state how much you paid Mr. Satterlee, Ben, for putting in the braces under the building where it now stands.

A. Well, the bill shows there \$175.00. My wife has been keeping the books—I don't know.

The Court: The question was how much does that bill show for putting in the posts.

A. 47 hours at \$1.75 an hour.

The Court: Does the bill show the rate?

Mr. Cochran: Yes, Your Honor. It shows the work done and the [106] rate. I offer it in evidence, Your Honor.

Mr. Tanner: No objection.

The Court: It may be received and marked "Defendants' Exhibit 3."

Mr. Cochran: Was there—did I ask you about this sump? I am not sure.

Mr. Tanner: Yes, you did.

Mr. Cochran: This witness?

Mr. Tanner: Yes.

Mr. Cochran: I think that covers—no it doesn't either. Now Ben, this building was moved onto the concrete foundation above the basement—onto the basement foundation about what time? About what time was it that the plaintiff in this case, Mr. Gillis, got this building moved onto the basement?

A. I wasn't down there to know, but I would say sometime in November.

(Testimony of Ben F. Gillette.)

Q. About what time in November?

A. Well, sometime after the first of November—I don't know exactly because I wasn't down there at the time.

Q. Now, Ben, what was the condition of the building when he put it on there, with reference to being open and exposed to the weather?

A. Well, the windows in the basement were all open and the new addition was all open, and the building was left alongside of the cement there for several days. They took all the men and went to work for Grant Jackson, and let the basement freeze up. [107]

Q. Did the basement freeze up, you say?

A. I did, yes.

Q. Why?

A. Well, the reason was because the building was not on in time.

Q. Now, was there any plumbing damaged by reason of this freezing?

A. Well, according to Duke's bill, there was.

Q. I don't care about that, Ben. I just want to know what you know about that.

A. Well, it was damaged through the moving, I know that.

Q. Not through the freezing? A. No.

Q. But through the moving? A. Yes.

Q. Was the furnace connected up in the basement after the house was moved? A. It was.

Q. When?

(Testimony of Ben F. Gillette.)

A. I think—it is hard for me to say, I was not down there.

Q. About what time was it, don't you know?

A. Well, sometime in November.

Q. Sometime in November? A. Yes.

Q. Was fire kept in it?

A. Yes, all the time.

Q. Who kept the fire?

A. The people that worked in there had a fire there.

Q. Who was using the building?

A. Well, Mr. Gillis' men.

Q. And why did they keep a fire in it?

A. Well, so they could work.

Q. Now, this concrete chimney—I believe I asked you questions about that, didn't I? Have you testified about the chimney?

A. I believe I have. [108]

Q. Now, Mr. Gillette, was the dining room completed, as shown in the plat, by Mr. Gillis?

A. No, it wasn't finished.

Q. What was done to it?

A. Well, there was plywood put onto it. Mr. Margraf put that on.

Q. I want to know what Mr. Gillis did on that?

A. Well, he had the celotex on, but they had no studding on the windows to nail anything to.

Q. Did you have that completed? A. Yes.

Q. Who did that? A. Margraf.

Q. At what cost?

(Testimony of Ben F. Gillette.)

A. 130 hours at \$2.00 an hour.

Q. \$260.00? A. Yes.

Q. Did you pay Mr. Margraf that amount?

A. We did, sure.

Q. Now, did you have a pump at your place?

A. Yes, it was a good one too.

Q. What kind of a pump was it?

A. It was a Burk.

Q. Did Mr. Gillis take that away?

A. I don't know—I did not see him; that was borrowed through my wife, which I knew nothing about at that time.

Q. Do you know Tony?

A. He was the one that got it.

The Court: How do you know he took it away?

A. We had it in the warehouse there.

Mr. Cochran: Did you see him, Ben?

A. I did not see him.

Q. Did somebody tell you?

A. They borrowed it from my wife.

The Court: Did someone tell you? Answer the question. A. No.

The Court: The answer will be stricken—

Mr. Cochran: You knew Tony?

A. I knew him, yes.

Q. And what was he doing around there?

A. Well, he was moving the skirting of the building there, and I saw him around the evening before they moved the building.

Q. Who was in charge of the work there for Mr.

(Testimony of Ben F. Gillette.)

Gillis? A. Tony.

Q. Now, what did this pump cost you?

A. \$150.00.

Q. What was the value of it at the time it was taken away?

A. We put the same value on it we paid for it, only it had more fittings.

Q. What condition was it in?

A. Well, Harper said it was OK.

Q. I am asking you. A. It was OK.

Q. Has it ever been returned? A. No.

The Court: Have you asked Mr. Gillis to return it? A. No, I have not.

The Court: Have you asked Tony to return it?

A. No, I haven't. I haven't seen any of them.

Mr. Cochran: Has Mr. Gillis ever offered to return that pump?

A. Not to my knowledge—not to me, no.

Q. Where is Tony?

A. I think he is outside.

Q. Do you know his last name?

A. No, I don't—only by "Tony."

Q. Do you know where they took that pump?

A. I do not know.

Q. Did they discuss with you—speak to you about taking it? A. They did not.

Q. That was with Mrs. Gillette? A. Yes.

Q. Now, Ben, in the moving of your place across the street, was it necessary to cut off the corner of the building—the [110] cornice of the building at the corner?

(Testimony of Ben F. Gillette.)

A. If I had the contract to move it, I would have certainly measured it—

Mr. Tanner: Just a minute, unless this person knows what he is talking about, I object—

The Court: Objection sustained.

Mr. Cochran: All right. Now Ben, was the corner of the building cut off by Mr. Gillis in the moving of it? A. I don't know.

Q. Did you see it?

A. I don't know whether he cut it off—

Q. What would you say would be a reasonable cost of repairing that—it was cut off, wasn't it?

Mr. Tanner: Just a moment, Your Honor—

The Court: I will sustain an objection to that.

Mr. Cochran: Are you familiar with what carpenters charge for their work around here?

A. We got familiar with it the last year or two.

Q. Well, now do you know about how long it would require a carpenter to fix that?

A. Well, it would probably—

Q. Well, Ben, I said do you know about how long? A. About 50 hours.

Q. Yes or no, Ben—do you know? Just answer my questions. A. No.

Q. You don't know? A. No.

Q. Do you know the approximate cost of material to fix that? A. No, I don't.

Q. You don't know about it at all?

A. No. [111]

Q. You say you don't know who cut that corner off? A. No.

(Testimony of Ben F. Gillette.)

Q. Did you? A. No.

Q. Did you have it done?

A. No, I did not.

Q. Now, Ben, the concrete walls of the basement—what is the condition of those now?

A. The walls are cracked.

Q. How many places? A. About five.

Q. How much?

A. Well, enough to let the water seep in.

Q. Did you ask Mr. Gillis to make any protection of the walls?

A. Well, if the floor of the basement had been put in in time, it would have saved the walls.

Q. What was the reason for those cracks in your opinion? A. Well, it was because—

Mr. Tanner: Just a minute—I object—

The Court: Objection sustained.

Mr. Cochran: Your Honor, I don't know how I can get qualified testimony—

The Court: Well, he might be qualified, or might not—

Mr. Cochran: Are you familiar with concrete walls?

The Court: What is the question?

(Question repeated to Court.)

The Court: That does not mean anything. That is a question without any connection—

Mr. Cochran: All right, Your Honor. Now, Ben, are you familiar with climatic conditions of Nome?

A. Yes.

(Testimony of Ben F. Gillette.)

Q. How long have you lived here?

A. About 48 years.

Q. Are you familiar with the conditions of the ground during the seasons?

A. Yes, the frost has a great effect on the ground. [112]

Q. Are you familiar with the ground where this concrete basement was poured?

A. I have been, yes.

Q. Ben, what in your opinion, is the reason for those walls having been cracked after having been poured?

Mr. Tanner: Just a minute—the proper foundation is not laid.

The Court: Objection sustained.

Mr. Cochran: When did that crack?

A. Last winter.

Q. Was there any reason, so far as you know, why Mr. Gillis could not and did not pour the floor in this concrete basement?

A. No reason whatever. He could have done it before the frost.

Q. How long did he have to pour that before the frost, approximately.

A. Well, approximately, he could have poured it by the 20th—

Q. How long a time?

A. He said he wanted seven days to leave it set, then he would pour the floor.

Q. Do you know of any method of repairing

(Testimony of Ben F. Gillette.)

these cracks in the concrete walls of the basement?

A. No, I do not.

Mr. Cochran: You may cross-examine.

Cross-Examination

By Mr. Tanner:

Q. Ben, what date did it freeze last fall?

A. That I do not know.

Q. Then what did you mean when you said the basement could have been poured before the frost.

A. Well, he certainly had plenty of time from the 8th of August until the time it did freeze to do it. [113]

Q. What time did it freeze?

A. Sometime, I suppose, about the first of November.

Q. You don't know, though?

A. No, but it is around that time.

Q. Does it sometimes freeze in September?

A. Sometimes, yes.

Q. When did you notice the wall had cracked in the basement?

A. This Spring—last Spring.

Q. When?

A. As quick as the water got to running and thawed out.

Q. When? A. Along in May or June.

Q. So all you know, as far as the time goes, from the time it was poured and the time you observed it this Spring, there were some cracks; is that

(Testimony of Ben F. Gillette.)

right? A. Yes.

Q. Now, Ben, part of the dining room was put up by the plaintiff, is that right? A. Yes.

Q. Now, in answer to the questions about the dining room, as specified by the plat what was done by the plaintiff; will you tell us just what was not done by the plaintiff; tell us by this plat?

A. Well, here is the kitchen and the dining room——

Q. Yes, but as outlined by your plat, just what was done?

A. Well, it was 8x30 feet long on the end of this building—that was in this agreement——

Q. Well, you stated the main portion was put up, wasn't it? A. Yes.

Q. Now, what details, according to the plat, were not completed?

A. I don't understand you—— [114]

Q. Are there any details shown, Ben, by this plat not completed by the plaintiff?

A. Of this dining room?

Q. Yes.

A. There was no sheeting put on and there was no celotex put on——

Q. Was the sheeting specified on the plat?

A. Well, we were supposed to have it built, weren't we?

Q. Well, there is nothing to specify anything relative to sheeting, is there?

A. No, not that I know of.

(Testimony of Ben F. Gillette.)

Q. Now, Ben, on this construction—on the details as to what you wanted done, you instructed the plaintiff from day to day as to what you wanted done, didn't you? A. I did not.

Q. Well, you said you tell him how the windows were to be put in?

A. Yes. Outside of that, I did not have anything more to do with it.

Q. Who did?

A. My wife seen him and I seen him once at the coffee shop there—that was the only time.

Q. Well, Ben, this plat does not show how you wanted the porches of the building completed, does it? A. It appears to me that we showed it.

Q. Does it show what kind of materials to be used?

A. We were to furnish the materials.

Q. Well, Ben, does this plat show that? It does not, does it? A. No.

Q. Now, Ben, take defendants' Exhibit One, does that show the details of how the various items are to be constructed?

A. That is up to the contractor to give us that. [115]

Mr. Cochran: I object to that—it speaks for itself.

Mr. Tanner: I won't press that, Your Honor. Now, Ben, you stated that you were up sometime the latter part of January to see the plaintiff.

A. I did.

Q. And you saw him in front of his shop?

(Testimony of Ben F. Gillette.)

A. Yes, I waited until he came out.

Q. And your purpose was to see if he could do some work? A. Yes.

Q. Now, he told you why he wasn't coming back?

A. He told me he took his tools away; he did not tell me why.

Q. Didn't you ask him why?

A. No, I didn't.

Q. I see. Now, Ben, from the time the house was moved onto the foundation—and by the way, what was that time, did you say? On or about what time was the house moved onto the foundation?

A. Sometime around, I suppose, the first of November—I did not see it. I know it was up there on stilts and his men working on the bank building, and that was after the storm.

Q. What date did you see it raised up on stilts?

A. The 29th of October, or something like that.

Q. But you do not know that?

A. Well, it was about then.

Q. How do you place the date?

A. Well, when did the storm come?

Q. So you would not be able to say just when it was put on? A. No.

Q. Now, when the building was placed, was there a sag in the building?

A. I don't know—I don't think there was. [116]

Q. When did this sag develop that you are speaking of?

A. Sometime, I suppose, it was in December.

Q. When did you learn of it?

(Testimony of Ben F. Gillette.)

A. In December sometime.

Q. How did you learn of it?

A. It was through the man that was doing the plumbing.

Q. He told you that?

A. Yes. I could not get around very well then.

Q. So that, that might be a month after it was on the foundation, isn't that right?

A. No, I don't think so.

Q. But you don't know, do you? A. No.

Q. But it was all right when it was put on; is that right? A. I suppose so, yes.

Q. Now, you were anticipating having the cement basement? A. Yes.

Q. And no doubt, cement pillars? A. No.

Q. In other words, to be permanently braced, the basement would have to be poled, isn't that correct?

A. Yes, I asked him to put those posts in at the time it was moved, but those posts were never there and never did show up.

Q. What I am trying to get at is that it would not be a permanent bracing until after the basement was poled, would it? A. No.

Q. And with the shifting of the weather, any house is likely to move in this country, isn't it?

A. Yes, but that ground at one time was not frozen—

Q. It is on frozen ground, isn't it, originally?

A. Yes. [117]

Q. And so the temporary pillars placed under

(Testimony of Ben F. Gillette.)

the building, with heat in your furnace, would probably cause it to sag a little bit, due to the thawing, and so on?

A. It never was put in.

Q. Would you answer what you think about that. A. Yes, it would thaw.

Q. Now, Ben, you have stated relative to the flue—when did you examine that last before your building was moved?

A. I was there in the spring after the storm; it was in perfect shape.

Q. You have a cased-in flue, don't you?

A. Yes.

Q. Did you remove the boards to see how it was?

A. No, I didn't.

Q. Ben, did you or did you not testify that you saw the plaintiff the day after learning of the sagging of the building, and went to see him about it? A. Somewhere around there.

Q. And you testified that you went to see him the latter part of January, didn't you?

A. It was about that time.

Q. So that the first you learned of the sagging was the latter part of January, wasn't it?

A. Yes, it was sometime the latter part of January—I don't know what time. I did not suppose I was going to have to keep those dates.

Q. Now, Ben, you made the statement that the plumbing was damaged in the moving of the building; what part of that was damaged, and how do you know when?

(Testimony of Ben F. Gillette.)

A. Because the pipes were all twisted.

Q. When did you determine that?

A. I went down underneath and looked in the basement. [118]

Q. And when did you look?

A. I don't know exactly the time, but as quick as I could get down into the bottom——

Q. You heard your wife testify that, relative to the plumbing, it was due to freezing

A. I don't believe I was down in the place until after I saw Mr. Gillis at his shop. I tried to get Mr. What-Do-You-Call-Him to go down there and fix—or am I to keep quiet?

Q. Now, Mr. Gillette, the work done by Mr. Margraf was not necessary because of any unworkman-like work on the part of the plaintiff, was it? In other words, it was just work that he did not do, wasn't it? A. That is right.

Q. Yes. That is all, Your Honor.

Mr. Cochran: Call Mr. Hite.

GEORGE HITE

Direct Examination

By Mr. Cochran:

Q. Your name is George Hite?

A. Yes, sir.

Q. What is your business, Mr. Hite?

A. Construction work and contracting.

Q. Carpenter? A. That's it.

Q. You are familiar with moving buildings, George? A. I am.

(Testimony of George Hite.)

Q. You are engaged in that business?

A. Yes, sir.

Q. How long have you been in that kind of work, Mr. Hite?

A. Ever since 1943, in Nome, or '44—'43, I think.

Q. And you have had a lot of experience in it?

A. Yes, sir.

Q. You were subpoenaed to appear here as a witness, George? A. Yes, sir. [119]

Q. Do you know where the Gillette residence was? A. I do.

Q. Do you know where it was moved to?

A. Yes, sir.

Q. What would be the reasonable cost of building an addition to that residence, 8x30 feet?

A. Well, I would not like to say in the Court or outside; I could estimate the cost, of course, but to get up in Court and tell you that would be—

Q. Well, I am just saying "to put on an addition"—

A. Well, I don't know anything about it. I would have to have plans; it might be a million dollar job or even a ten dollar job, I don't know.

Q. Well, such as the Gillette house—to put an addition on the side of it, put on the roof and the floor, and estimate a concrete basement under it—what is your opinion?

A. I have no opinion at all. I do not do guess-work.

(Testimony of George Hite.)

The Court: Well, I think the question is entirely too general. It might be built with cedar, fir, spruce or logs off the beach. The answer cannot be responsive to any of the issues in this case.

Mr. Cochran: I am not speaking of the material used. I am just speaking about putting up that addition and finishing it.

The Court: I will not permit the question to be asked in that way—it is too general.

Mr. Cochran: Would your Honor hear me on that?

The Court: No, it is too general. I think the answer is perfectly clear and correct. He must have plans and specifications and should know the materials.

Mr. Cochran: I think Your Honor should understand my position in the matter. I am undertaking to show that this contract—this offer specified the building of that addition, which was not built.

The Court: That is a question in this case. Does the plat show any size?

Mr. Cochran: Yes, Your Honor, it does show size; it gives the size of 8x22, 29x30—build-on 8x22. Yes, it shows it very clearly, Your Honor.

The Court: Is that ground space? The 8x22?

Mr. Cochran: No, Your Honor, it is on the plat itself.

The Court: There is nothing there on height?

Mr. Cochran: That is true, Your Honor—nothing on height.

(Testimony of George Hite.)

The Court: Your question does not have anything on height or materials; you may continue.

Mr. Cochran: George, do you know the inside height of the Gillette home? A. No, I don't.

Q. We will say it is 8 feet; would that make any difference?

A. I would not know. I never was in it; I was in the basement, but never in the house.

Q. Mr. Hite, in asking the question, I meant that all materials were to be furnished—just the construction of an addition to this house, 8x22 feet—

The Court: That does not aid the Court. I reject the question and direct the witness not to answer.

Mr. Cochran: Mr. Hite, did you see the building after it was moved? A. No, sir. [121]

Q. Do you know where it was moved?

A. No, I never seen it being moved at all.

Q. But you know the building and the nature of the building? A. Yes.

Q. All right. Mr. Hite, for the moving of that building across the street from the location where it was to where it is now, what would be a reasonable time?

A. I could not say that, Mr. Cochran, in the Court without figuring the job, because I don't know. I would know little about the moving. Mr. Rank did ask me to do so, and I asked Mr. Rank to tell Mrs. Gillette to talk to me and that was all I know about it; and it is pretty hard to say unless you figure it. I let the other fellow do it if he can do it cheaper.

(Testimony of George Hite.)

Q. Then, you do as you agree to do?

A. Well, I have always done it.

Q. Now, Mr. Hite, would you say that 987 hours was a reasonable time to consume in the moving of that building?

Mr. Tanner: That is not specific enough and does not give a basis for the proper answer, Your Honor——

The Court: I think the witness has made himself clear—that he is not competent to answer any questions in this case. We will take a 15 minute recess.

Mr. Cochran: Mr. Hite, were you down in the basement of the Gillette residence?

A. Yes, sir, I was.

Q. About what time was that?

A. I don't remember; it was sometime before August. I went down there with Mr. Gillette; [122] I went there to get some keys.

Q. Did you observe the posts that had not been put in there?

A. Indeed, I could not say; I just wanted to get some keys and did not pay any attention to the conditions—I did not observe anything.

Q. Did you see the sagging of that building?

A. No, I didn't. I never even looked for that. I did not notice anything like that because I wasn't looking for that—I just went to get some keys.

Mr. Cochran: All right, that is all, Mr. Hite.

Mr. Tanner: No questions, Your Honor.

The Court: Call your next witness.

Mr. Cochran: Call Mr. Margraf.

OSCAR A. MARGRAF

witness sworn;

Direct Examination

By Mr. O. D. Cochran:

Q. Your name is Oscar Margraf?

A. Oscar A. Margraf.

Q. You live here in Nome?

A. Yes, I have a residence here.

Q. Are you a carpenter? A. No.

Q. Do you do carpenter work?

A. I do some, but I do not follow it as a profession. I am a miner.

Q. Did you do some work for Gillettes?

A. I did.

Q. On their building?

A. Yes, I finished some little work they had to do before the frost.

Q. What did you do for the Gillettes on their building?

A. You want me to tell about the work?

Q. Yes.

A. I finished the outside of the building, put on the asbestos shingles and finished the eaves, and then [123] I finished the interior of one of their rooms; that is the extent of my work.

Q. That was completed?

The Court: Just a moment; what room?

A. Well, that extension that was on after it was moved—I presume the dining room.

Mr. Cochran: Was the work you did necessary to the completion of it?

(Testimony of Oscar A. Margraf.)

A. Well, it needed finishing.

Q. Was it necessary?

Mr. Tanner: Just a moment; he told what he did.

Mr. Cochran: What were you paid for that work?

A. I was keeping my own time and charged them \$2.00 an hour and it came to \$260.00; there was no question about it.

Q. How long were you there, Oscar?

A. 130 hours. I kept my own time.

Q. Did you see what Mr. Gillis had done there? You saw the work he did?

A. I don't know who done it.

Q. Will you tell the Court where they put three rolls of tar paper on that building?

A. Well, I have no way of telling about that, because it would be covered up.

Q. How much would it take to cover the roof?

A. I don't exactly know the size of it; Mr. Gillis could tell you.

Q. I want you to tell us; 17x7 feet, how many rolls would it take to cover that?

A. Well, you would have to tell me what kind of paper they used.

Q. How many feet would it take to cover? He has a charge for three rolls of tarpaper, and I want to know what has [124] been done about padding the account.

(Testimony of Oscar A. Margraf.)

The Court: Well, I think your remarks are out of place, Mr. Cochran.

Mr. Cochran: Didn't you tell me in the hallway there was no place that could have used three rolls of tar paper?

A. No, I did not make any remark like that.

Q. You are familiar with buildings?

A. Well, I presume I have put up over 100 of them.

Q. Oscar, was it necessary in the work he did there—could he have used 300 pounds of nails?

Mr. Tanner: Do you know what work was done there? A. Yes.

Mr. Cochran: You saw what was done? What have you reference to?

A. Well, all I saw—it was a lean-to put on there, and it was put on in a mechanical way, but it was not finished.

Q. Would they use 300 pounds of nails?

Mr. Tanner: That is entirely irrelevant, and there is no evidence before the Court that 300 pounds of nails were used at all.

The Court: Well, the witness has indicated that he does not know who did the work or how much was done.

Mr. Cochran: Is that correct, Mr. Margraf?

A. Yes.

Mr. Tanner: No cross-examination.

Mr. Cochran: Call Mr. Gillis, please.

W. M. GILLIS

Recross-Examination

By Mr. Cochran:

Q. Mr. Gillis, would you tell the Court what would be the reasonable cost of the construction of the room marked "bedroom" as shown on this plat? [125]

The Court: May I see the plat, please?

Mr. Cochran: Yes, Your Honor. The reasonable cost of the construction of the cost of that, Mr. Gillis?

The Court: As I understand it, this room was already in the building.

Mr. Cochran: No, it is not there yet, Your Honor. You don't understand it right. Now, either you or I are wrong about that—It was a build-on, Your Honor.

The Court: You are referring to the folded-over piece?

Mr. Cochran: Yes, Your Honor, I meant that bedroom which was built on. That is what I want to ask about, Your Honor. Now, Mr. Gillis, (indicating), just this part—what would be the reasonable cost of building this build-on here?

A. I could not say as to that, unless I knew more about what it was to be built.

Q. What would be the reasonable cost?

A. I would have to have time to figure that out. It would take some time to sit down and figure it out, and I would have to go through a few books

(Testimony of W. M. Gillis.)

I have on such things to look it up. I gave them an estimated cost on the moving of the building.

Q. Would it be \$500.00?

A. I could not say as to that until I looked it up.

Q. Would it be \$600.00?

A. I would not set any price on it until I had figured it out.

Q. Well, can't you figure it out now. You know what you were to do on that; you figured on it before, didn't you?

A. I figured on an addition to that house. I don't remember—[126] the figure was given in an over-all estimated cost. I would not say without time to figure it up.

Q. How long would it take you to do that?

A. Oh, probably until tomorrow.

Q. That is all the testimony I have to put on your Honor, but I don't know any other way available to me to show the cost of that.

The Court: Do you have any further questions?

Mr. Cochran: No, Your Honor, I think not. I may wish to call him later on. He says he can do it by tomorrow.

The Court: Well, what is the object?

Mr. Cochran: Well, the contract was for that and it was not done. Under my theory, it would be deductible.

The Court: It was partially for that.

Mr. Cochran: Yes, Your Honor—that was the whole theory.

(Testimony of W. M. Gillis.)

The Court: You had an opportunity upon cross-examination to go into those things—

Mr. Cochran: I was unable to prove it by Mr. Hite or by anybody else.

The Court: Well, you had this witness on the stand too, Mr. Cochran.

Mr. Cochran: He was on the stand, that is true. I have not called this witness before—I have only cross-examined, as to cross-examination.

The Court: Do you have any further testimony, Mr. Tanner?

Mr. Tanner: Yes, Your Honor.

The Court: Call your witness. [127]

Mr. Tanner: Call Mr. Gillis, please.

Redirect Examination

By Mr. Tanner:

Q. Mr. Gillis, Mrs. Gillette has testified, I think, relative to a conversation, and as I recall, she alleged she had with you in the North Pole Bakery sometime in January and, as I recall, prior to the time you had stopped the work. Will you tell us about that conversation, please?

A. Well, I was in the North Pole—I was having a cup of coffee there, and I don't remember the words, but anyway, she came over and wanted to know about the work, and complained about this and that—about not getting the work done fast enough and, as she testified herself, I said, "Mrs. Gillette, I told you I did not want that job when I first

(Testimony of W. M. Gillis.)

talked to you, there is a shortage of labor—," and she said something to the effect that "your work has shown that"; that was prior to the time I quit the job.

Q. Now, calling your attention to the call that Mr. Gillette made upon you that you have heard him testify to, sometime the latter part of January, in front of your shop. Do you recall that incident?

A. Yes, sir.

Q. Will you tell us what took place?

Mr. Cochran: That is objected to as having been testified to. He testified to having told Ben Gillette in January that Mrs. Gillette had directed him to cease the work. This is not cross-examination—it is simply to get the last say on that.

Mr. Tanner: If the Court pleases, I think Mr. Cochran is [128] inferring from the reply that the conversation with Mr. Gillette was never gone into and was left until Mr. Gillis testified to the conversation.

Mr. Cochran: Well, I put Mr. Gillette on and asked him if he had such a conversation. Mr. Gillis has gone on the stand and denied it. Now, he wants to disregard what was said during that conversation. It is a question, it seems to me, of veracity between Mr. Gillette and this witness.

Mr. Tanner: Well, the inference is that I am attempting to strengthen the testimony which is not the case. I am simply putting him on for rebuttal.

Mr. Cochran: I am simply saying it has gone on before.

(Testimony of W. M. Gillis.)

The Court: Well, I don't recall any testimony occurring with relation to what Mr. Gillette testified to as having occurred on any definite date in January. It was early in January, according to one of your first questions and answers.

Mr. Cochran: The record shows that Mr. Tanner brought it out.

The Court: On the contrary, Mr. Gillette testified that his wife had told him nothing.

Mr. Cochran: And he also testified that he never had the conversation with Mr. Gillis. Gillis testified he had notified Gillette that he had stopped the work.

The Court: Well, Mr. Gillette testified he did not hear any such thing, and this is proper rebuttal then.

Mr. Cochran: Can I then again deny it by calling Mr. Gillette on the stand? [129]

The Court: Well, this witness has never had an opportunity to testify on that. He may answer the question.

Mr. Tanner: Tell us what that conversation was, Mr. Gillis.

A. Mr. Gillette came over and I spoke to him and he wanted to know when we were going to be back down to his job. And I said we were not going to be there.

Q. Why?

A. Because Mrs. Gillette had told us to forget the whole thing. He said, "Did she say that"? He went on talking about who would do the work and

(Testimony of W. M. Gillis.)

I think if I recall rightly, he might get Pete Satterlee.

Q. Now, calling your attention to the testimony that has been given relative to the flue; was that flue examined prior to your moving the house?

A. Yes, we took a look at it. As much as we could see of it, some of the blocks were loose. We took off—I don't remember whether we took off a tin jacket or not. I instructed them, if they were loose, to take them down. We took a look at what we could see in the basement and where we had to cut in the basement to make it ready to move. I debated somewhat in my own mind whether to take the flue down before moving or move it with the building, and I decided if it would go along all right, it would be less time and less money to move it. If not, we would have to do the best we could with it. Then—well, we started to move the building. When we pulled the building out, that probably fouled the braces there and that did sag the building that was below the floor line there, consequently, when we got the thing over there. However, they went on and moved on across and told the boys we would see what was wrong.

Mr. Tanner: And you tore the boards off sufficiently to look at the flue, did you, Mr. Gillis?

A. That is right; we took some of the boards off.

Q. Now, relative to the bracing of the house after you took the building and set it on its foundation, what was done?

(Testimony of W. M. Gillis.)

A. We put only temporary posts under the house. They were temporary braces because—

Mr. Cochran: Just a moment now. The questions should be answered by "yes" or not. These speeches are not part of the testimony.

The Court: Go ahead.

A. They were temporary because it was our intention to put in braces for the permanent one.

Mr. Tanner: And that would be naturally resting on the frozen ground below?

A. Yes, temporarily.

Q. What was the condition—now, speaking of the sump that you have heard testimony on—at the time you told the boys to haul in backfill for the basement under the instructions, what was the condition in the basement there?

A. There was water on the basement floor, in the barrel that had been sunk for the sump there. There was an electric pump there which had been pumping, and it seems to be soggy and wet down there.

Q. Do you know anything about the filling up of the sump?

A. I do know that the boys, when they filled in, found the [131] sump there.

Q. Now, relative to your original conversation with Mrs. Gillette, where did you first meet Mrs. Gillette, in reference to this work?

A. At the Masonic Hall.

Q. What part of the Hall?

(Testimony of W. M. Gillis.)

A. Well, we were in front of what is now the main temple before the front section of the building was moved in.

Q. And what was that conversation, as near as you remember?

A. I don't remember exactly. She introduced herself as Mrs. Gillette and made some comment about the work over there and—oh, I can't remember the exact conversation about it.

The Court: Well, this has been gone over before.

Mr. Tanner: Pardon me, Your Honor, I was thinking it had not been. Do you recall Mrs. Gillette having with her at that time Defendants' Exhibit 2?

A. I don't remember; it is possible she did have, although I don't remember.

Q. Upon—did you or didn't you give to Defendants' Exhibit One? A. I did, yes.

Q. And tell us about Exhibit One and how you came to give it to the defendants?

Mr. Cochran: Just what is the purpose of that?

Mr. Tanner: To verify the terms of the instrument.

Mr. Cochran: If so, I object. It speaks for itself—it is irrelevant.

The Court: This has already been testified to—

Mr. Tanner: I don't think so, Your Honor. It was never raised [132] by the plaintiff at all. The Exhibit and everything was brought out by cross-examination and presented as an exhibit and referred to as a contract.

(Testimony of W. M. Gillis.)

The Court: This is Defendants' Exhibit One, is it?

Mr. Tanner: Yes, Your Honor.

The Court: You may ask the question.

Mr. Tanner: Will you tell us how you come to give that to the defendants?

A. As an approximate estimate of the work, as near as I could tell, so—as to what they wanted done at that time. If they had this plan here, which we don't remember, it was so very vague I did not connect it with the house. In fact, until it was brought up in Court, I did not know that this side addition here was to be put on at any time. My opinion was that the part that was added was the part which was to be put on. I went over there to look at the house, as Mr. Gillette testified, and he showed me through the basement and this section was to be put on there, which was a rampway or a walk. That was my picture of the house all the way. I did not know until this was brought up that that 8x30 addition was to go on the east side. I may have seen those plans, but I do not remember them, and there is a bare possibility that they were left in the shed where I was talking to Mrs. Gillette, but I did not base my approximate estimate on these plans, for the reason that there was not enough to go on, unless you know other things. I based it on what she told me about the house.

Q. Did you go over and look at the house?

A. Yes, I went [133] over to see approximately the size of it, where it was, what the conditions

(Testimony of W. M. Gillis.)

were, and several other things about it; I could not begin to give a figure from a plan like that.

Q. Now, what was your intended meaning at the time you wrote this over here? It states, "Complete new addition as shown."

A. Well, where they showed me the additions were to go. When I went to see the house, they showed me where they were to go. I was not sure about anything and they showed me approximately where they were to go. And they did not have any plans, or what I took for a plan, but I had nothing else I could work from unless they showed me at that time what it was they wanted done there.

Q. Now, Mr. Gillis, prior to the—what you call an estimate there, were you told in detail how everything was to be done? A. No, only generally.

Q. Calling your attention, Mr. Gillis, to the last sentence where it says, "Moving operations to be completed in October"; what did you mean?

A. At that time, I thought there was a chance we could complete it in October. That was purely an estimate, for the reason I could not estimate simply how long it would take. I had told her before that the work had to be worked in with other jobs and we would try and do it, and my approximate estimate of October was to take into consideration the other work that had to be done along with that. It was not simply a matter of moving one house; we had other work also and I could give only an approximate [134] time on that because you get fouled up on your time a lot of times.

(Testimony of W. M. Gillis.)

Q. Did you present that to the defendants—that it was to be a binding contract on you?

A. It was merely an estimate.

Q. Why did you present that estimate to the defendants?

A. To give them some reasonable idea of about what that much work would cost. As Mrs. Gillette testified, when I first talked to her, the subject was brought up about price—whether she asked me I don't know, or whether I said that I would make the statement I don't know, but I would much rather people would know approximately what something would cost them to have the work done; and a good many people do not realize the price of labor and material, and we would much rather have an agreement, so they would have an approximate idea, at least, of what the thing is going to run.

Q. Now, speaking of the forms, Mr. Gillis. There has been evidence, apparently attempting to discredit the work of tearing out the forms. Will you tell us why the forms placed by the defendants were torn out by you and other forms put in?

A. Part of the forms were in, but they were not ready for the concrete. They were not built—well, it would have taken us longer to have built—to have completed those, the way they were started, than it would to build the kind of forms we could put in there. It would take less money to do that, and the forms were not complete; at least, it did not look to me like it; and another thing, at [135] that time, Mrs. Gillette asked me to look that basement over.

(Testimony of W. M. Gillis.)

She said Mr. Harper had the forms too far toward Satterlees.

Q. Why was the cornice board not put back that you have heard testified to?

A. Because we were called off the job before we had it put back.

Mr. Tanner: That is all, Mr. Gillis.

Re Re-Cross-Examination

By Mr. Cochran:

Q. Now, Mr. Gillis, you say because you were pulled off of the job. Did you make any offer to replace this cornice?

A. Not after I was told that was all—not after Mrs. Gillette told me to let the whole thing go.

Q. When did you take it off?

A. I cannot say the exact date—whenever the house was moved.

Q. Was that September or June or July or August? A. I don't remember for sure.

Q. You know you cut it off?

A. That is right.

Q. Before you moved it across the street?

A. Before we moved it between the building there and the telephone poles.

Q. But you don't know when it was?

A. No, I don't know the exact date.

Q. That was before October, wasn't it?

A. No, sir, I don't think so.

Q. You claim you were called off the job on the 16th of September?

(Testimony of W. M. Gillis.)

A. No. The 16th of December was the last work we billed them for. [136]

Q. Did you say that up to that time, you had not attempted to put on this cornice?

A. Not up to that time, no.

Q. Did Mrs. Gillette say not to put the cornice back?

A. She told me that would be all the work—to let it go.

Q. Now, the agreement says, "Complete new addition, as shown." Now, didn't you mean as shown right on this plat here? What did you mean, "as shown"?

A. As we were shown at the house what they wanted. That plat did not show.

Q. Did not show the addition?

A. Not the completed one.

Q. Well, there it is on the end.

A. There is no stairway there—no height.

Q. You knew what the height was, didn't you?

A. Well, I could make a guess, but it was not shown.

Q. And this was the approximate amount that you gave? Why didn't you put "approximate amount" on the agreement?

A. Because I didn't figure it to be a contract at all. It was merely an estimate.

Q. Well, why didn't you put "estimate" on it?

A. I didn't think it was necessary—I didn't have enough plans or specifications to figure a contract off of.

(Testimony of W. M. Gillis.)

Q. Now, did you see the Gillettes about this estimate? A. I think I gave them that, yes.

Q. You went to their house, didn't you?

A. Yes, I think I did.

Q. And didn't you ask them whether to go on with the work? A. We did, yes.

Q. Did they tell you to go ahead? A. Yes.

Q. And then?

A. She told me when I first talked to her [137] that whatever the cost, to get it done, but to give a reasonable idea of approximately what that amount of work would come to, and I gave them that estimate. I think at that time they complained it was a little higher than they had figured the work would come to, but said to go ahead with it.

Q. Now, isn't it a fact that you talked over this plan? A. It is possible, yes.

Q. And then you asked them if you should go ahead with the work? A. That is right.

Q. And then they told you to go ahead and you started the work?

A. That is right. But you claim it was a contract—it was not even intended as a contract.

Q. Now, isn't it a fact that the addition shown upon this plat that was to be built—isn't it a fact that you went to them and told them you could not complete that until the following summer?

A. I think not. I think that was when she was over to see me, and when she went on with it, and I told her it might not even be completed until the

(Testimony of W. M. Gillis.)

next year because we did not have the materials.

Q. And then didn't they tell you if it could not be completed before the winter, they would not build it?

A. I don't remember that conversation.

Q. Do you remember their having dropped the building of this addition?

A. No, we built it on.

The Court: Are you speaking about the proposed original addition?

Mr. Cochran: That is right, Your Honor. [138]

The Court: You are speaking not of the porch then—

Mr. Cochran: No, Your Honor.

The Court: All right, go on.

Q. I did not even know that this addition was to be built. I only took notice of the approximate size when I went down there—I don't remember—

Q. Well, surely you remember what—

The Court: He says he does not remember the details. When you accuse a witness of something not true, you should be called for it. You then interrupted this witness when he was only about half through his answer.

Mr. Cochran: I realize that—the question was did you discuss with them the subject of not building that addition?

A. After they told me to go ahead with the work?

Q. Yes, after that.

A. If you are talking about this addition on this plat—

(Testimony of W. M. Gillis.)

Q. I am talking about the addition that you did not build.

A. Well, as I said before, up until this was brought up here this time, I did not realize that that was the addition they were talking about. The only one I knew about was the one they did build on there. She talked about a glassed-in porch and I told her we would have to make them and that that was an expensive proposition.

Q. And they abandoned that, didn't they?

A. They told us to go ahead with it. It was a room is what it was. It wasn't a porch even. [139]

Q. Well, did you put that on?

A. We did; we made them, yes, sir.

Q. Well, you did not have to wait until the following summer to do that?

A. Well, I told her that would not be available in town and that I would have to make them.

Q. And did you make them?

A. Well, I didn't know whether we could take time enough.

Q. Well, that is charged in your bill, isn't it?

A. Yes, sir, the three we did make.

Q. Well, there was no necessity to tell them that had to be delayed until the following summer, was there?

A. It was my opinion that they were not available in town if they put in those sashes.

Q. Who made the sashes?

(Testimony of W. M. Gillis.)

A. Well, what I am getting at whether they are shipped in or whether we make them.

Q. Yes, but you know special sashes in odd sizes don't come in manufactured? A. They don't?

Q. No, only the standard sizes are manufactured—

The Court: Are you arguing with the witness?

Mr. Cochran: No, Your Honor.

The Court: Well then, put it in the form of a question.

Mr. Cochran: I am just asking, isn't that true—only standard sizes are manufactured?

A. No, sir, you can order any size of sash you want from a sash and door factory.

Q. When was it that Mrs. Gillette came to see you at the Masonic Temple?

A. I do not know the day for sure—somewhere around the first of August. [140]

Q. This is dated the 8th—would that be it?

A. I think probably before that—I am not sure.

Q. And when did you next see the Gillettes?

A. Oh, I could not say for sure on that; probably the next day or two.

Q. Did you take this estimate, as you call it, down?

A. I don't remember, but maybe I did. I don't remember whether I gave them the estimate then or not.

Q. You had not been down to their place?

A. Not at that time—I think not.

Q. So that any approximation that you made

(Testimony of W. M. Gillis.)

was from conversation? A. Yes.

Q. Then what do you mean by "complete new addition as shown"?

A. As shown according to the way they wanted it built.

Q. Well, you had not been down to the house—

A. No, I still did not know where they wanted the things until they showed me where they wanted them.

Q. Well, what do you mean by "as shown" if you did not have a plan?

A. Well, as they showed me.

Q. But you had not been down there, you said.

A. Well, I was on the job when we were putting the new addition on—

Mr. Cochran: That is all.

Mr. Tanner: If the Court please, I have one more witness; could we have a five or ten minute recess?

The Court: We will recess for ten minutes, yes. [141]

Mr. Tanner: Mr. Paterson, please take the stand?

HUGH F. PATERSON

Witness sworn.

Direct Examination

By Mr. Tanner:

Q. State your name, please.

A. Hugh F. Paterson.

Q. You are a resident of Nome?

A. Yes.

(Testimony of Hugh F. Paterson.)

Q. Are you a carpenter and builder?

A. Yes.

Q. How long have you been in that business?

A. About 38 years.

Q. You have had experience with concrete and cement, have you? A. Yes.

Q. Understand it? A. Yes.

Q. Mr. Paterson, did you have occasion, or did you see at any time the foundation—the concrete foundation poured for the Gillette residence?

A. I did.

Q. Did you observe it, Mr. Paterson?

A. I did.

Q. From your observation, would you say that was a standard pouring job? A. I would.

Q. In the construction of forms for the basement that you have observed—the concrete basement walls—I think the testimony shows that it is about 24x30 feet—approximately what would you say would be required in nails for the construction of the forms and the runway for the pouring of the cement?

A. I think it would take about 200 pounds; that is, two kegs.

Mr. Tanner: You may cross-examine. [142]

Cross-Examination

By Mr. Cochran:

Q. Mr. Paterson, how many nails in a pound?

A. I never counted them.

(Testimony of Hugh F. Paterson.)

Q. You have no idea? A. No.

Q. How many nails in a keg?

A. 100 pounds.

Q. How many?

A. 96 to 100 pounds, I am not sure.

Q. You don't have the number?

Mr. Tanner: Well, ask him the size; there may be different sizes—

Mr. Cochran: Well, he said there would be two kegs.

Mr. Tanner: You did not ask him the size.

Mr. Cochran: This was a concrete form that had been built before by Mr. Harper, I believe it shows—

Mr. Tanner: We are not talking about Mr. Harper's job, Mr. Cochran.

Mr. Cochran: Who placed those forms, do you know?

A. Mr. Gillis did, so far as I know.

Mr. Cochran: Scotty, what examination did you make of the pouring of these forms?

A. I was down past that way when they were pouring cement and I observed it then.

Q. What part of it did you consider standard?

A. It was all standard; it was a standard foundation.

Q. What is a standard foundation?

A. What is down underneath that house now.

Q. What do you mean by that Scotty?

A. Well, they are all built alike—

(Testimony of Hugh F. Paterson.)

Q. Well, what do you mean by that?

A. There are no different standard foundations.

Q. The form on the ground; is that correct?

A. I did not see it lying on the ground.

Q. Did you mean the foundation that the walls were on; is that it?

A. The foundation was on, and well braced. It takes a lot of braces and I did not see any bulges.

Q. Now, if concrete is poured on a standard base, is it presumed to crack?

A. Well, I have seen them crack; you mean the forms?

Q. It should not crack, should it?

A. Well, that would be something the matter with the ground—not the concrete.

Q. Shouldn't the ground be properly prepared when you pour the concrete on it?

A. I don't know who done the excavating there.

Q. If it had been properly prepared and the concrete was poured in the standard form, it should not have cracked, should it? A. I don't know.

Q. Well, you are an expert, aren't you? I am asking you, if concrete is poured on the proper foundation, it should not be cracking, should it?

A. No, I don't think so.

Q. At least, within the course of a few months, should it?

A. That is a hard question to answer—to say yes or no to that.

Q. You don't know then?

(Testimony of Hugh F. Paterson.)

A. Yes, I have seen it crack, and when it did not. The foundation on my house outside is cracked.

Q. But did it crack the next day? A. No.

Q. There was a reason for it, wasn't there?

A. Not that I could see, not unless the ground settled some place where the concrete was on. [144]

Q. Well, then, the foundation was not properly tamped, was it?

A. That is probably what was the matter with it —there might not be enough excavation in it.

Q. Where the wall of a basement cracks and leaks water, is there any way of fixing that?

A. Concrete is porous; water will seep through it, unless you can buy stuff to mix in to make it water-proof.

Q. To mix outside?

A. No, right in the machine.

Q. And you can paint it?

A. Yes, you can paint the outside too.

Q. And that insures it against leaking?

A. Yes, generally.

Q. That is all, Scotty.

Mr. Tanner: That is all, Mr. Paterson, thank you.

The Court: Do you have anything further?

Mr. Tanner: We rest, Your Honor.

Mr. Cochran: No, Your Honor.

The Court: Do you wish to let the arguments go over until Monday?

Mr. Cochran: I would like to have Mr. Gillis

answer that question—the reason of the cost of the construction of that addition.

Mr. Tanner: I think the Court has made that a closed issue.

Mr. Cochran: Well, I have asked the Court to let me get the question answered. If it is not material, well I have no further evidence at this time.

The Court: I don't think it is material, for this reason—that the testimony is that it was a rough estimate and the conditions [145] now have changed. I don't see what bearing it would have on the foreclosure of this lien. I don't exactly understand your reason for wanting it answered.

Mr. Cochran: Well, I could state it, Your Honor. I could be very brief in the matter. Mrs. Gillette went to see the plaintiff in this case and stated what she wanted to have done. She furnished him with a plat as to what was to be done. He returned to them with a written statement, a contract, signed it, and put on the price, and subsequently came back and was asked to go ahead. That constitutes the agreement. The price is stated not approximately, but definitely, and just exactly what was to be done, and not to be done, in the handwriting of the plaintiff himself. Now then, the plaintiff says he did not complete the contract because he was told not to complete it. Now then, we are relying on the contract. The part he did not complete, as provided in the contract, he surely would not be entitled to anything for it. If he did not complete the contract for the price given them, then what he did not do

certainly should be deducted from any amount he should have coming.

The Court: Well, I think I understand that. However, this is asking him to do something now on a basis that isn't the original basis. In other words, if he had at that time—if the testimony showed that at the time when he made this contract, as you call it, he had figured in this item and that, with the moving and building of the foundation and the addition, [146] then we might go into that.

Mr. Cochran: That is right. They fixed the price for all of the work, including this addition specified in the contract. Now, he admits he did not do that work. Now should he recover for something he did not do that he agreed to do?

The Court: I don't know whether it would be very enlightening to the Court: It appears to me now that the case was closed, if there was a matter of the kind, it was a very light one, as to details—

Mr. Cochran: Well, it is all admitted.

The Court: On details? At the time of the original estimate?

Mr. Cochran: Well, I call it a contract.

The Court: I am speaking of both parties, at the time that amount was arrived at.

Mr. Cochran: They stated what was done and what was not to be done. They were asked to go ahead and furnish a complete contract and this written statement was furnished them. They accepted it and directed the plaintiff to go ahead; that is undisputed testimony.

The Court: There is no testimony as to details here; there is no testimony as to what did go into construction here.

Mr. Cochran: The plaintiff knew. The porch had been enclosed, as agreed, but this addition was not built. He figured those things out at the time he furnished these figures.

Mr. Tanner: If the Court please, if we are going to argue in detail, I would like to have an opportunity—— [147]

The Court: It is only this particular point—whether the witness, on cross-examination or rebuttal, should be asked to figure it out now.

Mr. Cochran: No, Your Honor, it was not on rebuttal. I called him as a witness. It was my direct case. I called him as a witness. Anyway, I stated my reason for wanting the question answered and I believe I am right or I would not make the contention.

The Court: Mr. Tanner?

Mr. Tanner: Well, as a matter of fact, Your Honor, it seems to me that this is asking the plaintiff in this case to answer matters which have never been asked for in the beginning, and he—as plaintiff testified here, it was an over-all picture of the job, and now to expect him to attempt to put himself back into the situation for the benefit of the defendants and attempt to figure in a detailed portion, I don't think it is fair. He stated that his estimate covered an over-all proposition.

Mr. Cochran: I don't care what it was he ad-

mitted. He did not do what he agreed to do. Now, if he did not do that, he is not entitled to any pay for it.

The Court: Now, suppose he testified to a certain figure, won't you be bound by your own pleadings, regardless? The question will be denied. I will hear your arguments Monday morning at 10 o'clock.

In the District Court for the Territory
of Alaska, Second Division

REPORTER'S CERTIFICATE

United States of America,
Territory of Alaska—ss.

I, Maude R. McAlee, Official Court Reporter for the hereinabove entitled court, do hereby certify:

That as such Official Court Reporter, I reported the above entitled cause, viz. W. M. Gillis vs. Ben F. and Irene Gillette, No. 3737 of the files of said court; that I reported said cause in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting; that the foregoing pages, numbered 1 to 148, both inclusive, contain a full, true and correct transcript of all the proceedings at the hearing of the above entitled cause, as to testimony of witnesses, to the best of my ability.

Witness my signature this 29th day of April, 1948.

/s/ MAUDE R. McALEE,
Official Court Reporter, U. S. District Court, First
Division, Territory of Alaska.

[Endorsed]: Filed January 30, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Territory of Alaska, Second Division—ss.

I, Norvin W. Lewis, Clerk of the United States District Court, Territory of Alaska, Second Division, do hereby certify that the foregoing Transcript on Appeal contains the original Complaint, Summons, Motion to make Definite and Certain, Detailed Statement of Account, Answer, Reply, Plaintiff's Exhibits "A," "B" "C," "D," and "E," Defendants' Exhibits "1," "2," and "3," Transcript of Testimony (original and one copy), Memorandum of Findings and Conclusions, Findings of Fact and Conclusions of Law, Judgment, Petition for Allowance of Appeal, Assignment of Errors, Order Allowing Appeal and Fixing Amount of Cost Bond, Cost Bond on Appeal, Motion for Extension of Time for Filing Transcript on Appeal, Order Extending Time for Filing Transcript on Appeal, Citation on Appeal (Lodged Copy), Praeclipe for Transcript of Record, Stipulation Re: Printing of Record, Copy of Order Remanding, Findings of Fact and Conclusions of Law, Judgment, Notice of Appeal, Cost Bond on Appeal, Motion for Extension of Time to File Transcript on Appeal, Order Extending Time to File Transcript on Appeal and Praeclipe-Designa-

tion of Record in the case of W. M. (Alias Bill) Gillis, plaintiff, vs. Ben F. Gillette and Irene Gillette, defendants, No. 3737 Civil this Court.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court this 3rd day of March, A.D. 1950.

[Seal] /s/ NORVIN W. LEWIS,
Clerk.

[Endorsed]: No. 12145. United States Court of Appeals for the Ninth Circuit. W. M. (Alias Bill) Gillis, Appellant, vs. Ben F. Gillette and Irene Gillette, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Alaska, Second Division.

Filed March 7, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 12145

W. M. (Alias, BILL) GILLIS,

Plaintiff (Appellant),

vs.

BEN F. GILLETTE and IRENE GILLETTE,

Defendants (Appellees).

STIPULATION

In Re: Plaintiff's Second Appeal.

It is hereby stipulated by and between the above-named parties that, in printing the papers and records to be used on the hearing on Appeal in the above-entitled cause, for the consideration of the United States Court of Appeals for the Ninth Circuit, the title of the Court and cause in full and

on all papers shall be omitted, except on the first page of said Record, and that there shall be inserted in place of said title on all papers used as a part of said Records the words, "Title of Court and Cause," and also that all indorsements on said papers used as a part of said Record may be omitted, except as to the Clerk's file marks and the admission of service.

Dated this 7th day of February, 1950.

W. M. GILLIS,

By /s/ C. C. TANNER,

His Attorney.

BEN F. GILLETTE,

IRENE A. GILLETTE,

By /s/ CHELLIS CARPENTER,

Their Attorney.

[Endorsed]: Filed March 7, 1950.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON BY
APPELLANT AND DESIGNATION OF
RECORD CONSIDERED MATERIAL FOR
REVIEW

In Re: Plaintiff's Second Appeal

I.

Statement of Points

The Trial Court erred—

1. In finding (or assuming) that a completed

agreement was entered into between the Plaintiff and Defendants.

2. In finding that by agreement the Plaintiff bound himself to move Defendants' building to its new location in October, 1946 (Court's Findings, Section III).

3. In finding that Plaintiff by agreement bound himself to complete Defendants' work for the sum of \$2,872.28 (Court's Findings, Section III).

4. In finding that Plaintiff's abandonment of the work was wilful and without cause (Court's Findings, Section III).

5. In finding that "as a separate agreement" the Plaintiff furnished materials to the Defendants (Court's Findings, Section IV).

6. In finding that the Plaintiff * * * "in the latter part of January, 1947 * * * then quit and withdrew from the premises" (Court's Findings, Section V).

7. In not making a finding that the Plaintiff at the Defendants' request performed 987 hours of work for the Defendants of the reasonable value of \$2,220.75.

8. In not making a finding that Plaintiff's lien was duly filed within the 90 day period immediately subsequent to the time he ceased to furnish labor and materials; and that the cost of filing same was \$1.95.

9. In not making a finding of a reasonable attorney's fee to be allowed the Plaintiff.

10. In concluding that the Plaintiff was not entitled to judgment of lien foreclosure (Conclusions of Law, Section I).

11. In concluding that Defendants are entitled to damages in the sum of \$917.25 (Conclusions of Law, Section III).

12. In not concluding that Plaintiff was entitled to judgment for labor performed and materials supplied in the total sum of \$1,746.83 with interest, costs of filing lien, a reasonable attorney's fee, and costs of action.

13. In not concluding that Plaintiff's lien was a valid, subsisting lien against Defendants' property for the work performed and the materials supplied.

14. In discharging Plaintiff's lien (Judgment, Par. 1).

15. In giving judgment to Defendants for the sum of \$391.13 and interest (Judgment, Par. 2).

16. In not giving judgment to the Plaintiff for the sum of \$1,746.83 with interest plus lien filing fee of \$1.95 plus a reasonable attorney's fee plus costs of action.

17. In not giving judgment of lien foreclosure against Defendants' property for the total sum found due the Plaintiff excluding interest.

II.

Designation of Record Considered by the Appellant to Be Material for Review.

Note: In making the following Designation the Appellant assumes that inasmuch as this is a Second Appeal (and after the cause of First Appeal having been remanded) the Appellate Court will consider the First

Transcript on Appeal in connection with the Second Transcript on Appeal and without the necessity of the reproduction of the material included in the First Transcript.

The Appellant (Plaintiff below) considers the following to be essential for review in this Second Appeal:

1. Transcript on First Appeal.
2. Praeince on Second Appeal dated and filed January 30, 1950.
3. Findings of Fact and Conclusions of Law dated and filed December 2, 1949.
4. Judgment dated and filed December 2, 1949.
5. Notice of Appeal dated and filed December 27, 1949.
6. Cost Bond on Appeal dated and filed December 27, 1949.
7. Order Extending Time to File Transcript on Appeal dated January 5, 1950, and filed January 9, 1950.
8. Stipulation in re Printing of Record dated February 7, 1950.
9. Application for Appellate Court to review Original Exhibits.
10. Order of Appellate Court (if made) Authorizing Review of Original Exhibits.
11. Transcript of Testimony Taken at Trial.
12. Plaintiff's Exhibit A introduced at trial (Daily Time Sheets).
13. Plaintiff's Exhibit B introduced at trial (Original Lien as Filed).

14. Plaintiff's Exhibit D introduced at trial (Carbon Copy of Bill for \$52.30).

15. Plaintiff's Exhibit E introduced at trial (Carbon Copy of Bill for Labor and Materials.

16. Defendants' Exhibit 1 introduced at trial (One Sheet with Printed Heading "Bill Gillis, Box 645, Nome, Alaska").

17. Defendants' Exhibit 2 introduced at trial (One Sheet Pencil Sketch of Ground Floor of Building).

18. Appellant's Concise Statement of Points on which he intends to rely and Designation of Record considered essential for consideration thereof.

Dated at Nome, Alaska, this 21st day of February, 1950.

/s/ C. C. TANNER,

Attorney for Appellant.

United States of America,
Territory of Alaska—ss.

C. C. Tanner, being first duly sworn, deposes and says:

I am attorney for W. M. GILLIS, Appellant. On the 21st day of February, 1950, I deposited in the United States Post Office at Nome, Alaska, a sealed, air-mailed envelope, air mail postage pre-paid, containing a true copy of the foregoing "Statement of Points Relied Upon by Appellant and

Designation of Record Considered Material for Review" and addressed to Chellis Carpenter, Esq., 220 Montgomery Street, San Francisco 4, California.

/s/ C. C. TANNER.

Subscribed and Sworn to before me at Nome, Alaska, this 21st day of February, 1950.

[Seal] /s/ NORVIN W. LEWIS,
Clerk of the District Court for the Territory of
Alaska, Nome, Alaska.

[Endorsed]: Filed March 7, 1950.

At a Stated Term, to wit: The October Term 1949, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the thirteenth day of March in the year of our Lord one thousand nine hundred and Fifty.

Present: Honorable Clifton Mathews,
Circuit Judge, Presiding,
Honorable Homer T. Bone,
Circuit Judge.

[Title of Cause.]

**ORDER THAT EXHIBITS NEED NOT BE
REPRODUCED IN PRINTED TRANSCRIPT**

Upon consideration of the application of the appellant and the stipulation of counsel for respective parties, and good cause therefor appearing,

It Is Ordered that the original exhibits transmitted as a part of the record on appeal in this cause need not be reproduced in the printed transcript of record but will be considered by the Court in their original form.

